(34) (33)

Nos. 03-334 and 03-343

Supreme Court, U.S.
FILED
JAN 14 2004
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In The Supreme Court of the United States

SHAFIQ RASUL, ET AL.,
Petitioners,
v.
GEORGE W. BUSH, ET AL.,
Respondents.

FAWZI KHALID ABDULLAH FAHAD AL ODAH, ET AL.,
Petitioners,
v.
UNITED STATES OF AMERICA, ET AL.,
Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

JOINT APPENDIX

THOMAS B. WILNER
Counsel of Record
NEIL H. KOSLOWE
KRISTINE A. HUSKEY
JARED A. GOLDSTEIN
HEATHER LAMBERG KAFELE
SHEARMAN & STERLING LLP
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 508-8000
(202) 508-8100 fax
Counsel for Petitioners
in No. 03-343

JOSEPH MARGULIES
Counsel of Record
MARGULIES & RICHMAN, PLC
2520 Park Avenue, South
Minneapolis, MN 55404
(612) 872-4900
(612) 872-4967 fax
Counsel for Petitioners
in No. 03-334

THEODORE B. OLSON
Solicitor General
Counsel of Record
PETER D. KEISLER
Assistant Attorney General
PAUL D. CLEMENT
Deputy Solicitor General
GREGORY G. GARRE
DAVID B. SALMONS
Assistants to the Solicitor General
DOUGLAS N. LETTER
ROBERT M. LOEB
CATHERINE Y. HANCOCK
Attorneys
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217
(202) 514-3658 fax
Counsel for Respondents

[Additional Counsel Listed On Inside Cover]

Petition For Certiorari Filed September 2, 2003
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COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

MICHAEL RATNER
BARBARA J. OLSHANSKY
STEVEN WATT
Center for Constitutional Rights
666 Broadway
New York, NY 10012
(212) 614-6430
(212) 614-6499 fax

JOHN J. GIBBONS
GITANJALI S. GUTIERREZ
GIBBONS, DEL DEO, DOLAN,
GRIFFINGER & VECCHIONE, P.C.
One Riverfront Plaza
Newark, NJ 07102
(973) 596-4700
(973) 596-0545 fax
Counsel for Petitioners
in No. 03-334

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RELEVANT DOCKET ENTRIES

US Court of Appeals for the DC Circuit

AL ODAH, et al v. USA, et al

8/12/02	CIVIL-US CASE docketed – Notice of Appeal filed by Appellants Khaled A. F. Al Odah, et al., [696265-1] (jth) [02-5251]
8/12/02	LETTER filed by Counsel for Appellants Khaled A.F. Al Odah, et al., in accordance with D.C. Circuit Rule 47.2 regarding expedition of this case [696266-1]. Certificate of mail service dated 8/6/02. [THIS LETTER WAS RECEIVED ON 8/6/02 BEFORE RECEIPT OF THE NOTICE OF APPEAL FROM DISTRICT COURT] (jth) [02-5251]
8/21/02	CLERK'S ORDER filed [697023] directing Appellant to file [697023-1]: docketing statement; certificate of counsel; statement of issues; lower court decision; any procedural motions; transcript status notice; deferred appendix notice; appearance form; certification that appellate docketing fee has been paid to the Clerk of the district court due 9/20/02; any dispositive motions due 10/7/02. Directing Appellee to file [697023-2]: certificate of counsel; any procedural motions; appearance form due 9/20/02; any dispositive motions due 10/7/02. [Entry Date: 8/21/02] (sha)[02-5251]
	* * *
8/27/02	MOTION filed (5 copies) by Appellant Khaled A. F. Al Odah, et al. (certificate of service dated 8/27/02 by mail) to expedite appeal [698356-1]. Response due on 9/9/02. (sha) [02-5251]
	* * *

9/5/02 RESPONSE filed [700051-1] (5 copies) by Appellee USA, Appellee George W. Bush, Appellee Donald H. Rumsfeld, Appellee Richard B. Myers, Appellee Rick Baccus, Appellee Terry Carrico (certificate of service dated 9/5/02) to a motion expedite case [698356-1]. (sha) [02-5251]

9/9/02 PER CURIAM ORDER filed [700707] granting motion expedite case and setting briefing schedule [700707-1]: Appellant's brief due on 9/17/02; Appellant's appendix due on 9/17/02; Appellee's brief due on 10/11/02; Appellant's reply brief due on 10/22/02. Parties directed to file and serve briefs by hand; oral argument date and composition of merits panel will be established by separate order. Before Judges Edwards, Rogers, Tatel. [Entry Date: 9/9/02] (mam)

* * *

9/13/02 PER CURIAM ORDER filed [701827-1] granting the motion to consolidate No. 02-5284 with No. 02-5288 [701789-1]. It is FURTHER ORDERRED that the motions to expedite [701779-1], [701783-1] be granted. FURTHER ORDERED, on the court's own motion, that consolidated Nos. 02-5284 and 02-5288 be consolidated with No. 02-5251 [701827-1]. FURTHER ORDERED that the following briefing format and schedule apply in all three consolidated cases [701827-3]: Joint Brief for Appellants Habib and Rasul (not to exceed 14,000 words) due on 9/24/02; Brief for Appellant Odah (not to exceed 14,000 words) due on 9/24/02; Joint appendix due on 9/24/02; Appellees' Brief (not to exceed 14,000 words) due on 10/18/02; Joint Reply Brief for Appellants Habib and Rasul (not to exceed 7,000 words)

due on 10/29/02, Reply Brief for Appellant Odah (not to exceed 7,000 words) due on 10/29/02. Absent extraordinarily compelling circumstances, the court will not grant any modification of these provisions. The parties are directed to file and serve their briefs by hand. The oral argument date and composition of the mertis [sic] panel will be established by separate order. Before Judges: Edwards, Rogers and Tatel. [Entry Date: 9/13/02] [02-5251, 02-5284, 02-5288] (jth) [01-5251 02-5284 02-5288]

* * *

9/13/02 INITIAL SUBMISSIONS filed by Appellees USA, et al., in No. 02-5251, [702183-1]: Certificate of Counsel. (jth) [02-5251]

9/20/02 CLERK'S ORDER filed [703458] to schedule oral argument [703458-1] before Judge Initials: ARR MBG SFW on 12/2/02 at 9:03 AM. [Entry Date: 9/20/02] [02-5251, 02-5284, 02-5288] (cwc) [02-5251 02-5284 02-5288]

* * *

9/20/02 INITIAL SUBMISSIONS filed by the Appellants Khaled A. F. Al Odah, et al., in 02-5251, [703621-1]: docketing statement; certificate of counsel; statement of issues; lower court decisions; the deferred appendix notice (Deferred Appendix needed = n). (jth) [02-5251]

9/20/02 NOTICE filed by Appellants Khaled A. F. Al Odah, et al., in 02-5251, FINAL transcript status notice filed [703624-1]. All Transcripts have been ordered and paid for. Certificate of mail service dated 9/20/02. (jth) [02-5251]

9/24/02 BRIEF lodged by Appellants Khaled A. F. Al Odah, et al in 02-5251 [704182-1]. Copies: 15.

Certificate of e-mail service date 9/24/02. (jlp) [02-5251]

9/25/02 SUPPLEMENT to [704226-1] appellant's brief (Certificate of Compliance) [704182-1] filed by Appellants Khaled A. F. Al Odah, et al. (One copy placed in each copy of brief). (jlp) [02-5251]

9/25/02 PER ABOVE SUPPLEMENT lodged appellant's brief [704182-1] is filed. (jlp) [02-5251]

9/25/02 JOINT APPENDIX filed [704252-1]. Copies: 10. Certificate of e-mail service dated 9/24/02. [02-5251, 02-5284, 02-5288] (jlpP [02-5251 02-5284 02-5288]

9/30/02 MOTION filed (5 copies) (certificate of service dated 9/30/02) to allow amicus curiae [705085-1]. Response due on 10/10/02. Motion filed by Intl Ctr Leg Protc. [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/1/02 NOTICE filed of intention to participate as amicus curiae [705156-1] by Bar Human Rights Com, et al. Certificate of service date 9/30/02. [02-5284, 02-5288] (sha) [02-5284 02-5288]

10/1/02 BRIEF filed by Amicus Curiae for Appellant Bar Human Rights Com, et al. [705161-1]. Copies: 14. Certificate of service date 9/30/02. [02-5284, 02-5288] (sha) [02-5284 02-5288]

10/7/02 NOTICE filed of intention to participate as amicus curiae [706580-1] by Natl Assn Cr Def Law in 02-5288 styled as "Notice of Motion and Motion for Leave to File Brief as Amicus Curiae". Certificate of service date 10/7/02. (sha) [02-5288]

10/7/02 BRIEF lodged by Amicus Curiae for Appellant Natl Assn Cr Def Law in 02-5288 [706585-1]. Copies: 7. Certificate of service date 10/7/02. (sha) [02-5288]

10/8/02 CORRECTED BRIEF filed by Amicus Curiae for Appellant Natl Assn Cr Def Law in 02-5288 [706746-1]. Copies: 15. Certificate of service date 10/7/02. (sha) [02-5288]

10/11/02 BRIEF lodged by Movant-Amicus Curiae-Appellant Intl Ctr Leg Protc in 02-5251 [707626-1]. Copies: 15. Certificate of service date 10/11/02. (NOTE: SEE 10/17/02 ORDER; LEAVE TO FILE THIS BRIEF AS AMICUS CURIAE DENIED.) (sha) [02-5251]

* * *

10/17/02 PER CURIAM ORDER filed [708343] denying non-party motion to allow amicus [705085-1] filed by Intl Ctr Leg Protc, without prejudice to renewal upon the submission, within 7 days of the date of this order, of a brief signed by a member of the Bar of this court. [707626-1] Before Judges Randolph, Garland, Williams. [Entry Date: 10/17/02] [02-5251, 02-5284, 02-5288] (cwc) [02-5251 02-5284, 02-5288] (cwc) [02-5251 02-5284 02-5288]

10/18/02 BRIEF filed by Appellee USA, et al. [708807-1]. Copies: 15. Certificate of service date 10/18/02. [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/18/02 SUPPLEMENTAL APPENDIX lodged by Appellee USA, et al. [708809-1]. Copies: 10. Certificate of service date 10/18/02. [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/21/02 MOTION filed (5 copies) by Appellee USA, et al. (certificate of service dated 10/21/02) for leave

to file [708897-1] a supplemental appendix [708809-1]. [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/24/02 MOTION filed (5 copies) (certificate of service dated 10/24/02) to allow amicus curiae [710058-1]. Motion filed by Intl Ctr Leg Protc [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/24/02 BRIEF lodged by Movant-Amicus Curiae-Appellant Intl Ctr Leg Protc [710060-1]. Copies: 15. Certificate of service date 10/24/02. [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/25/02 NOTICE filed of intention to participate as amicus curiae [711010-1] by WA Leg Fdn, Allied Educ Fdn, Jewish Inst Natl Sec in 02-5284 and 02-5288. (sha) [02-5284 02-5288]

10/25/02 BRIEF filed by Amicus Curiae for Appellee WA Leg Fdn, et al. in 02-5284 and 02-5288 [711015-1]. Copies: 15. Certificate of service date 10/25/02. [02-5284, 02-5288] (sha) [02-5284 02-5288]

U.S. District Court

USDC District of Columbia (Washington)

CIVIL DOCKET FOR CASE #: 02-CV-828

AL ODAH, et al v. USA, et al

DATE	#	DOCKET ENTRY
5/1/02	1	COMPLAINT filed by plaintiffs FAWZI KHALID AL ODAH, KHALED A. F. AL ODAH, OMAR RAJAB AMIN, MOHAMMD R. M. R. AMEEN, NASSER AL MUTAIRI, NAYEF N. N. B. J. AL MUTAIRI, KHALID ABDULLAH MISHAL AL MUTAIRI, MESHAL A. M. TH AL MUTAIRI, MANSOUR K. A. KAMEL, ABDULAZIZ SAYER OWAIN AL SHAMMARI, ABDULLAH SALEH ALI AL AJMI, MESFER SALEH ALI AL AJMI, MUBARA F. S. M. AL DAIHANI, FAYIZ MOHAMMED AHMED AL KANDARI, MOHAMMAD A. J. M. H. AL KANDARI, FWAD MAHMOUD AL RABIAH, MONZER M. H. A. AL RABIEAH, ADIL ZAMIL ABDULL MOHSSIN AL ZAMIL, WALID Z. A. AL ZAMEL (bcs) [Entry date 05/06/02] [1:02cv828]
		* * *
5/1/02	2	NOTIFICATION OF RELATED CASE: Case related to Case No(s): 02-299□ (bcs) [Entry date 05/06/02] [1:02cv828]
5/1/02	3	MOTION filed by plaintiff to consolidate cases for pretrial proceedings to case 02-299 (bcs) [Entry date 05/06/02] [1:02cv828]

5/6/02	–	SUMMONS issued (7) to federal party(s) federal defendant USA, GEORGE W. BUSH, DONALD H. RUMSFELD, RICHARD B. MYERS, RICK BACCUS, TERRY CARRICO, and non-parties: U.S. Attorney and U.S. Attorney General. (bcs) [1:02cv828]
5/7/02	4	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed on 5/6/02 upon federal defendant GEORGE W. BUSH (bcs) [Entry date 05/09/02] [1:02cv828]
5/7/02	5	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed on 5/6/02 upon federal defendant DONALD H. RUMSFELD (bcs) [Entry date 05/09/02] [1:02cv828]
5/7/02	6	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed on 5/6/02 upon federal defendant RICHARD B. MYERS (bcs) [Entry date 05/09/02] [1:02cv828]
5/7/02	7	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed upon U.S. Attorney on 5/6/02 (bcs) [Entry date 05/09/02] [1:02cv828]
5/7/02	8	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed upon U.S. Attorney General on 5/6/02 (bcs) [Entry date 05/09/02] [1:02cv828]
5/9/02	9	MOTION filed by plaintiff KHALED A.F. AL ODAH for preliminary injunction; exhibits (9). (rje) [Entry date 05/10/02] [1:02cv828]

5/9/02	11	ERRATA by plaintiffs regarding omitted table of contents belonging to their memorandum of points and authorities in support of plaintiffs' motion for preliminary injunction (cdw) [Entry date 05/14/02] [1:02cv828]
5/13/02	12	RESPONSE by federal defendants USA, GEORGE W. BUSH, DONALD H. RUMSFELD, RICHARD B. MYERS, RICK BACCUS, and TERRY CARRICO to motion to consolidate cases for pretrial proceedings to case 02-299 [3-1] by KHALID AL ODAH (bm) [Entry date 05/14/02] [1:02cv828]
5/14/02	10	ORDER by Judge Colleen Kollar-Kotelly: that defendants shall file an opposition to the motion for preliminary injunction no later than 5/28/02. Plaintiffs shall file a reply to defendants' opposition to the motion for preliminary injunction no later than 6/5/02. The Court will set a hearing date in June that will accommodate the arguments in this case and the arguments in RASUL v. BUSH, 02cv299. The Court shall promptly be provided with a courtesy copy of all filings in the above-captioned matter pursuant to the procedures discussed at the conference call held on 5/13/02. (N) (dot) [1:02cv828]
5/16/02	13	RETURN OF SERVICE/AFFIDAVIT of summons and complaint executed on 5/16/02 upon federal defendant RICK BACCUS, federal defendant TERRY CARRICO (nmr) [Entry date 05/17/02] [1:02cv828]

5/23/02 14 TRANSCRIPT filed for date(s) of 5/13/02. Reporter: Edward Hawkins (aet) [Entry date 05/24/02] [1:02cv828]

5/28/02 15 MOTION filed by federal defendant to dismiss plaintiffs' motion for preliminary injunction [9-1] and complaint [1-1]. (td) [Entry date 05/31/02] [1:02cv828]

6/5/02 16 RESPONSE by plaintiffs in opposition to motion to dismiss plaintiffs' motion for preliminary injunction [9-1] and complaint [1-1] [15-1] by federal defendants; attachment (1). (bm) [Entry date 06/07/02] [1:02cv828]

6/5/02 17 MOTION filed by plaintiff for hearing on plaintiffs' motion for a preliminary injunction (bm) [Entry date 06/07/02] [1:02cv828]

6/14/02 18 ORDER by Judge Colleen Kollar-Kotelly: motion hearing set for 2:00 6/26/02 on defendants' motion to dismiss. The parties' arguments shall be solely focused upon the issue of whether the Court has jurisdiction to entertain plaintiffs' filing. Plaintiffs shall be allotted one half-hour, to make any additional arguments not presented to the Court during arguments in Rasul v. Bush, Civ. No. 02-299, which is also scheduled for oral argument on June 26, 2002. (N) (dot) [1:02cv828]

* * *

6/24/02 20 ORDER by Judge Colleen Kollar-Kotelly: that defendants will speak first and are allotted 20 minutes for prepared comments that address the merits of their motions to dismiss in this case and in the case of RASUL v. BUSH, Civ. No. 02-299. Plaintiffs

will speak third, following the arguments made by defendants and those made by petitioners in RASUL, and are allotted fifteen minutes for prepared comments. Plaintiffs should consult petitioners' counsel in RASUL to ensure that plaintiffs' comments are not duplicative of those made by petitioners' cousel [sic] in RASUL. Defendants will be given an appropriate opportunity to respond to the arguments made by plaintiffs in this matter and petitioners in RASUL. (N) (dot) [Entry date 06/25/02] [1:02cv828]

6/26/02 – STATUS HEARING before Judge Colleen Kollar-Kotelly: hearing held and taken under advisement Reporter: Edward Hawkins (dot) [Entry date 07/01/02] [1:02cv828]

7/3/02 26 MOTION (CONSENT) filed by plaintiff for leave to file post-argument brief correcting erroneous statements by defense counsel a oral argument; EXHIBIT (BRIEF) (aet) [Entry date 07/31/02] [1:02cv828]

7/8/02 22 AMENDED COMPLAINT by plaintiffs adding plaintiff SAAD MADAI SAAD HAWASH AL-AZMI, HAMAD MADAI SAAD, and amending complaint [1-1]. (bcs) [Entry date 07/09/02] [1:02cv828]

7/12/02 23 RESPONSE (OPPOSITIONS) by federal defendants to plaintiff's Post-Argument Brief (mpt) [Entry date 07/15/02] [1:02cv828]

7/16/02 24 REPLY by plaintiffs to defendant's response to plaintiff's post argument brief [23-1]. (aet) [Entry date 07/17/02] [1:02cv828]

7/30/02 25 ORDER by Judge Colleen Kollar-Kotelly: granting motion for leave to late file their reply in support of motion to dismiss and response to plaintiffs request for expeditious hearing [19-1] by federal defendants (N) (dot) [Entry date 07/31/02] [1:02cv828]

7/30/02 27 ORDER by Judge Colleen Kollar-Kotelly: granting motion for leave to file post-argument brief correcting erroneous statements by defense counsel a [sic] oral argument [26-1] by KHALED A.F. AL ODAH (N) (dot) [Entry date 07/31/02] [1:02cv828]

* * *

7/30/02 28 ORDER by Judge Colleen Kollar-Kotelly: granting motion to consolidate cases for pretrial proceedings to case 02-299 [3-1] by FAWZI KHALID AL ODAH in 1:02-cv-00828. The Court consolidates ODAH v. UNITED STATES, Civil Action No. 02cv828, with RASUL v. BUSH, Civil Action No. 02cv299, for the limited purpose of addressing the Court's jurisdiction to hear these matters. (N) (dot) [Entry date 07/31/02] [1:02cv299 1:02cv828]

7/30/02 29 MEMORANDUM OPINION by Judge Colleen Kollar-Kotelly (N) (dot) [Entry date 07/31/02] [1:02 cv 299 1:02cv828]

7/30/02 30 ORDER by Judge Colleen Kollar-Kotelly: granting motion to dismiss first amended petition for writ of habeas corpus [25-1] [26-1] by TERRY CARRICO, MICHAEL LEHNERT, DONALD RUMSFELD, GEORGE WALKER BUSH in 1:02-cv-00299. Granting motion to dismiss plaintiffs' motion for preliminary injunction [9-1]

and complaint [1-1]. [15-1] by federal defendants in 1:02-cv-00828. RASUL v BUSH, 02cv299, and ODAH v. UNITED STATES, 02cv828, are dismissed with prejudice. (N) (dot) [Entry date 07/31/02] [1:02 cv299 1:02cv828]

7/30/02 31 Post Arument brief filed by plaintiffs in 1:02-cv-00828, correcting erroneous statements by defense counsel at oral argument.; exhibits (3) (aet) [Entry date 08/02/02] [1:02cv828]

8/2/02 32 NOTICE OF APPEAL by plaintiffs in 1:02-cv-00828 from order [30-1], entered on: 7/30/02. Copies sent. No fees paid. (COPY) (aet) [Entry date 08/08/02] [Edit date 08/08/02] [1:02cv828]

8/8/02 33 TRANSCRIPT filed for date(s) of 6/26/02. Reporter: Edward Hawkins (aet) [Entry date 08/09/02] [1:02cv828]

8/13/02 – USCA #2-5251 assigned for appeal [32-1] by KHALED A.F. AL ODAH (aet) [Entry date 08/20/02] [1:02cv828]

* * *

9/9/02 – NOTICE OF APPEAL by petitioners SHAFIQ RASUL in 1:02-cv-00299, SKINA BIBI, ASIF IQBAL, MOHAMMED IQBAL, DAVID HICKS, TERRY HICKS from order [43-1], order [41-1], entered on: 7/30/02. Fees paid. Copies sent. (aet) [Entry date 09/11/02] [1:02cv299]

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FAWZI KHALID ABDULLAH FAHAD AL ODAH
Detainee, Camp X-Ray/ Camp Delta
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

KHALED A. F. AL ODAH
Next Friend of Fawzi Khalid Abdullah Fahad Al Odah
Kuwait

OMAR RAJAB AMIN,
Detainee, Camp X-Ray/ Camp Delta
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

MOHAMMAD R. M. R. AMEEN
Next Friend of Omar Rajab Amin
Kuwait

NASSER NIJER NASER AL MUTAIRI
Detainee, Camp X-Ray/ Camp Delta
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

NAYEF N.N.B.J. AL MUTAIRI
Next Friend of Nasser Nijer Naser Al Mutairi
Kuwait

No. CV 02-0828 (CKK)

KHALID ABDULLAH MISHAL AL MUTAIRI
Detainee, Camp X-Ray/ Camp Delta
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

MESHAL A.M. TH AL MUTAIRI
Next Friend of Khalid Abdullah Mishal Al Mutairi
Kuwait

ABDULLAH KAMAL ABDULLAH KAMAL AL KANDARI
Detainee, Camp X-Ray/ Camp Delta
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

MANSOUR K.A. KAMEL
Next Friend of Abdullah Kamal Abdullah Kamal Al Kandari
Kuwait

ABDULAZIZ SAYER OWAIN AL SHAMMARI
Detainee, Camp X-Ray/ Camp Delta
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

SAYER O.Z. AL SHAMMARI
Next Friend of Abdulazziz Sayer Owain Al-Shammari
Kuwait

ABDULLAH SALEH ALI AL AJMI)
Detainee, Camp X-Ray/)
Camp Delta)
Guantanamo Bay Naval Base)
Guantanamo Bay, Cuba)
)
MESFER SALEH ALI AL AJMI)
Next Friend of Abdullah Safeh)
Ali Al Ajmi)
Kuwait)
)
MOHAMMED FUNAITEL AL)
DIHANI)
Detainee, Camp X-Ray/)
Camp Delta)
Address Unknown)
)
MUBARAK F.S.M. AL DAIHANI)
Next Friend of Mohammed)
Funaitel)
Al Dihani)
Kuwait)
)
FAYIZ MOHAMMED AHMED)
AL KANDARI)
Detainee, Camp X-Ray/)
Camp Delta)
Address Unknown)
)
MOHAMMAD A.J.M.H. AL)
KANDARI)
Next Friend of Fayiz)
Mohammed Ahmed)
Al Kandari)
Kuwait)
)
FWAD MAHMOUD AL RABIAH)
Detainee, Camp X-Ray/)
Camp Delta)
Address Unknown)

MONZER M.H.A. AL RABIEAH)
Next Friend of Fwad Mahmoud)
Al Rabiah)
Kuwait)
)
ADIL ZAMIL ABDULL)
MOHSSIN)
AL ZAMIL)
Detainee, Camp X-Ray/)
Camp Delta)
Address Unknown)
)
WALID Z.A. AL ZAMEL)
Next Friend of Adil Zamil)
Abdull Mohssin)
Al Zamil)
Kuwait)
)
SAAD MADAI SAAD HA WASH)
AL-AZMI)
Detainee, Camp X-Ray/)
Camp Delta)
Address Unknown)
)
HAMAD MADAI SAAD)
Next Friend of Saad Madai)
Saad Hawash)
Al Azmi)
Kuwait)
)
Plaintiffs,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
GEORGE W. BUSH,)
President of the United States)
The White House)
1600 Pennsylvania Avenue)
Washington, D.C. 20500)

DONALD H. RUMSFELD,
Secretary of Defense
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

GENERAL RICHARD B. MYERS
Chairman, Joint Chiefs of Staff
9999 Joint Chiefs of
Staff Pentagon
Washington, D.C. 20318-9999

BRIGADIER GENERAL
RICK BACCUS,
Commander, Joint Task
Force-160
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

COLONEL TERRY CARRICO
Commander, Camp X-Ray/
Camp Delta
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba,

Defendants.

AMENDED COMPLAINT

This is a civil action brought by 12 Kuwaiti nationals (the "Kuwaiti Detainees") who are being detained in the custody of the United States at the Guantanamo Bay Naval Base, Guantanamo Bay, Cuba ("Guantanamo"), and by 12 of their family members (the "Family Members") who are also Kuwaiti nationals and who speak on their behalf. The Kuwaiti Detainees have been held virtually *incommunicado* since as early as January 11, 2002. Although the Secretary of Defense was authorized by the President in the President's Military Order of November

13, 2001, to detain non-citizens if the President has made a written determination that there is reason to believe they are or were members of al Qaida, or engaged in terrorist acts against the United States, the President has made no such determination with respect to the Kuwaiti Detainees.

Plaintiffs do not seek release from confinement in this Amended Complaint. Rather, they seek modest but essential relief while they are being detained and interrogated by defendants. They seek the right to (1) meet with their families, (2) be informed of any charges against them, (3) be able to consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal. These are fundamental rights of due process guaranteed to detainees under the Fifth Amendment to the Constitution and customary international law. The grant of this limited relief will not interfere in any way with the ability of the United States to conduct its essential war against terrorism or to determine who was responsible for the horrible acts of September 11, 2001, and to bring those individuals to justice.

I.
JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction of this civil action under 28 U.S.C. §§ 1331, 1350, and 1361. A cause of action exists under the Constitution, 5 U.S.C. § 702, 28 U.S.C. §§1350, 2241-2243, and the laws of nations and treaties of the United States. To the extent immunity to this suit may be asserted by defendants, that immunity is waived by 5 U.S.C. § 702. The Court is authorized to grant the relief requested by plaintiffs under 5

U.S.C. § 706, and 28 U.S.C. §§ 1350, 1361, 1651, 2201, 2202, and 2241-2243.

2. Venue lies in this Court under 28 U.S.C. §§ 1391(b), (e).

II.
PARTIES

3. Plaintiffs Fawzi Khalid Abdullah Fahad Al Odah, Omar Rajab Amin, Nasser Nijer Naser Al Mutairi, Khalid Abdullah Mishal Al Mutairi, Abdullah Kamal Abdullah Kamal Al Kandari, Abdulaziz Sayer Owain Al Shammari, Abdullah Saleh Ali Al Ajmi, Mohammed Funaitel Al Dihani, Fayiz Mohammed Ahmed Al Kandari, Fwad Mahmoud Al Rabiah, Adil Zamil Abdull Mohssin Al Zamil, and Saad Madai Saad Alzmi (the "Kuwaiti Detainees") are Kuwaiti nationals who are detained under the custody of the United States at Guantanamo.

4. Plaintiff Khaled A.F. Al Odah is a Kuwaiti national and the father of plaintiff Fawzi Khalid Abdullah Fahad Al Odah; plaintiff Mohammad R.M.R. Ameen is a Kuwaiti national and the brother of plaintiff Omar Rajah Amin; plaintiff Nayef N.N.B.J. Al Mutairi is a Kuwaiti national and the brother of plaintiff Nasser Nijer Naser Al Mutairi; plaintiff Meshal A.M.TH Al Mutairi is a Kuwaiti national and the brother of plaintiff Khalid Abdullah Mishal Al Mutairi; plaintiff Mansour K.A. Kamel is a Kuwaiti national and the brother of plaintiff Abdullah Kamal Abdullah Kamal Al Kandari; plaintiff Sayer O.Z. Al Shammari is a Kuwaiti national and the father of plaintiff Abdulaziz Sayer Owain Al Shammari; plaintiff Mesfer Saleh Ali Al Ajmi is a Kuwaiti national and the brother of Abdullah Saleh Ali Al Ajmi; plaintiff Mubarak F.S.M. Al

Daihani is a Kuwaiti national and the brother of plaintiff Mohammed Funaitel Al Dihani; plaintiff Mohammad A.J.M.H. Al Kandari is a Kuwaiti national and the father of plaintiff Fayiz Mohammed Ahmed Al Kandari; plaintiff Monzer M.H.A. Al Rabieah is a Kuwaiti national and the brother of plaintiff Fwad Mahmoud Al Rabiah; plaintiff Walid Z.A. Al Zamel is a Kuwaiti national and the brother of plaintiff Adil Zamil Abdull Mohssin Al Zamil, and plaintiff Hamad Madai Saad is a Kuwaiti national and the brother of plaintiff Saad Madai Saad Al-Azmi. The plaintiffs other than the Kuwaiti Detainees are referred to as the Family Members.

5. Defendant George W. Bush is the President of the United States; defendant Donald H. Rumsfeld is the Secretary of Defense; defendant General Richard B. Myers is the Chairman of the Joint Chiefs of Staff; defendant Brigadier General Rick Baccus is the Commander of Joint Task Force-160, which is responsible for the detention operation at Guantanamo; defendant Colonel Terry Carrico is the Commandant of Camp X-Ray/Camp Delta at Guantanamo and the custodian of the detainees at Guantanamo. They are sued in their official and individual capacities. The Executive Branch of the United States Government, designated as the United States of America, is also a defendant.

III.
FACTS

The Terrorist Attacks of September 11, 2001

6. On September 11, 2001, terrorists struck the United States, highjacking four airplanes and flying three of them into the twin towers of the World Trade Center in

New York City and the Pentagon, killing thousands of innocent people. Soon after this terrorist attack, the United States Government identified the terrorists as members of the al Qaida terrorist organization.

7. In the wake of the terrorist attack of September 11, 2001, President Bush launched a military campaign against al Qaida headquartered in Afghanistan and supported by the Taliban Regime. On September 18, 2001, Congress adopted a Joint Resolution that authorized the President to use force against the "nations, organizations, or persons" that "planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons." Joint Resolution 23, Authorization for Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224. The United States' military campaign against al Qaida and the Taliban is being conducted in cooperation with other nations, including Pakistan, as well as a coalition of Afghani groups known as the Northern Alliance, which opposes the Taliban.

8. On information and belief, some members and supporters of al Qaida and the Taliban have attempted to hide from the United States and its allies during the military campaign in dispersed areas of Afghanistan and Pakistan. On information and belief, the United States and its allies have encouraged local authorities in Afghanistan and Pakistan to assist in the location, identification, and apprehension of these al Qaida and Taliban members and supporters.

President Bush's Military Order of November 13, 2001

9. On November 13, 2001, President Bush issued the Military Order of November 13, 2001, entitled "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism" (the "Military Order"). 66 Fed. Reg. 57,831 (Nov. 16, 2001).

10. Section 1 of the Military Order recites "Findings" about the terrorist attacks of September 11, 2001, including a finding that "it is necessary for individuals subject to this order * * * to be detained."

11. In section 2(a) of the Military Order, President Bush defines the term "individual subject to this order" to mean "any individual who is not a United States citizen with respect to whom I determine from time to time in writing that":

> (1) there is reason to believe that such individual, at the relevant times,
>
> (i) is or was a member of the organization known as al Qaida;
>
> (ii) has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
>
> (iii) has knowingly harbored one or more individuals described in subparagraphs (i) or (ii) of subsection 2(a)(1) of this order, and

(2) it is in the interest of the United States that such individual be subject to this order.

12. Section 2(b) of the Military Order declares that "[i]t is the policy of the United States that the Secretary of Defense shall take all necessary measures to ensure that any individual subject to this order is detained in accordance with section 3, and, if the individual is to be tried, that such individual is tried only in accordance with section 4."

13. Section 3 of the Military Order provides that "[a]ny individual subject to this order shall be (a) detained at an appropriate location designated by the Secretary of Defense outside or within the United States."

Seizure of the 12 Kuwaiti Detainees

14. On information and belief, the Family Members allege that the Kuwaiti Detainees were in Afghanistan or Pakistan, some before and some after September 11, 2001, as volunteers for charitable purposes to provide humanitarian aid to the people of those countries, such as assisting in developing potable water sources, working in hospitals, and arranging for the sponsorship of orphans. There is a long tradition of such volunteer service by Kuwaiti nationals in countries of crisis worldwide, including Afghanistan and Pakistan. Such volunteer service is encouraged by the Kuwaiti Government and Kuwaiti employers. One aspect of the Kuwaiti Government support of volunteer service is by continuing to pay the salaries of its Kuwaiti employees while they are engaged in such volunteer service abroad.

15. On information and belief, the Family Members allege that none of the Kuwaiti Detainees is or ever has been a combatant or belligerent against the United States, or a member or supporter of al Qaida or the Taliban, or a member of any terrorist organization, and that none of the Kuwaiti Detainees has ever engaged in or supported any terrorist or hostile act against the United States. None of the Family Members has ever engaged in or supported any terrorist or hostile act against the United States, and on information and belief the Family Members allege that no other member of their families has ever engaged in or supported any terrorist or hostile act against the United States.

16. On information and belief, the Family Members alleged that the Kuwaiti Detainees were seized against their will in Afghanistan or Pakistan after September 11, 2001, by local villagers seeking promised bounties or other financial rewards, and that, subsequently, they were taken into custody by the United States. Several of the families of the Kuwaiti Detainees received letters from several of the Kuwaiti Detainees after they were taken into custody by the United States expressing the sentiment: "Thank God I am now with the Americans," and a confidence that they would soon be able to return home to their families.

United States' Detention of the Kuwaiti Detainees

17. President Bush has not determined in writing that there is reason to believe that, at the relevant times, any of the Kuwaiti Detainees is or was a member of the organization known as al Qaida, or has engaged in any of the acts described in section 2 of the Military Order, or

that it is in the interest of the United States that any of the Kuwaiti Detainees be subject to the Military Order.

18. None of the other defendants has stated publicly or informed plaintiffs why or on what basis the Kuwaiti Detainees are being detained. None of the defendants has stated publicly or informed plaintiffs that the Kuwaiti Detainees are enemy combatants or belligerents against the United States.

19. William T. Monroe, Deputy Chief of Mission of the Embassy of the United States in Kuwait, sent a letter dated March 25, 2002, to the Ministry of Foreign Affairs of Kuwait, stating that plaintiff Fawzi Khalid Abdullah Fahad Al Odah has been in detention under United States custody at Guantanamo since February 13, 2002; plaintiff Omar Rajah Amin has been in detention under United States custody at Guantanamo since January 11, 2002; plaintiff Nasser Nijer Naser Al Mutairi has been in detention under United States custody at Guantanamo since February 7, 2002; plaintiff Khalid Abdullah Mistral Al Mutairi has been in detention under United States custody at Guantanamo since February 9, 2002; plaintiff Abdullah Kamal Abdullah Kamal Al Kandari has been in detention under United States custody at Guantanamo since February 11, 2002; and plaintiff Abdulaziz Sayer Owain Al Shammari has been in detention under United States custody at Guantanamo since February 9, 2002.

20. The family of plaintiff Abdullah Saleh Ali Al Ajmi received a letter from him dated February 28, 2002, mailed from Guantanamo on March 1, 2002, which indicates that he is in detention under United States custody at Guantanamo.

21. On May 6, 2002, a Kuwaiti attorney representing the Family Members was informed by the Government of Kuwait that it received written confirmation from the United States Government that plaintiffs Fayiz Mohammed Ahmend Al Kandari, Fwad Mahmoud Al Rabiah, Adil Zamil Abdul Mohssin Al Zamil, and Saad Madai Saad Al-Azmi are in detention under custody of the United States at Guanatanamo [sic]. No confirmation has been received to date concerning plaintiff Mohammed Funaitel Al Dihani.

22. On April 3, 2002, Abdul Rahman R. Al-Haroun, a Kuwaiti attorney retained by the families of the Kuwaiti Detainees, received from the Government of Kuwait a copy of the letter referred to in paragraph 19, from William T. Monroe, Deputy Chief of Mission of the Embassy of the United States in Kuwait, to the Ministry of Foreign Affairs of Kuwait.

23. On April 6, 2002, Mr. Al-Haroun and plaintiff Khaled A.F. Al Odah, representing the families of the Kuwaiti Detainees, met at the United States Embassy in Kuwait with Andrew Morrison, First Secretary and Head of the Political Section of the Embassy, and Yousef Khalil, a political specialist at the Embassy. Plaintiff Khaled A.F. Al Odah had previously submitted to the United States Embassy a list containing the names of ten of the 12 plaintiff Kuwaiti Detainees, seeking information about them. At the time of the meeting, plaintiff Khaled A.F. Al Odah did not have information that plaintiffs Adil Zamil Abdull Mohssin Al Zamil and Saad Madai Saad Al-Azmi were in the custody of the United States.

24. During the meeting of April 6, Mr. Al-Haroun and plaintiff Khaled A.F. Al-Odah asked Mr. Morrison and Mr. Khalil to provide them with information about the ten

Kuwaiti Detainees on the list previously submitted by plaintiff Khaled A.F. Al Odah. Specifically, they asked Mr. Morrison and Mr. Khalil to confirm that these ten Kuwaiti Detainees were in the custody of the United States; to identify the location of their detention; to provide their families with the opportunity to contact and meet with them; to advise whether any of them were being accused of wrongdoing, and if not, why they were not being released; and, if any of the ten were being investigated, to grant them access to counsel of their choice and conditional release during the pendency of the investigation.

25. At the meeting of April 6, Mr. Morrison and Mr. Khalil did not provide Mr. Al-Haroun and plaintiff Khaled A.F. Al Odah with any information about the ten plaintiff Kuwaiti Detainees on the list submitted by plaintiff Khaled A.F. Al Odah, and would neither confirm nor deny that any of those Kuwaiti Detainees were in the custody of the United States. However, Mr. Morrison said he would take Mr. Al-Haroun's and plaintiff Khaled A.F. Al Odah's requests under consideration, consult with others, and provide them with a reply.

26. Mr. Al-Haroun and plaintiff Khaled A.F Al Odah have not received any reply to their requests from Mr. Morrison or Mr. Khalil or from anyone else at the United States Embassy in Kuwait or in the United States Government.

27. Counsel for plaintiffs have been told by the Defense Department that, to maintain "force protection," the Defense Department has adopted a policy not to disclose the identities of, or other information about, specific individuals detained by the United States to their families or representatives. Counsel for plaintiffs further

have been told by the Defense Department that the United States is making such disclosures only to the governments of the countries in which those individuals are nationals.

28. The Family Members have not been permitted to meet with the Kuwaiti Detainees.

29. On information and belief, the Family Members allege that the Kuwaiti Detainees have not been informed of the charges, if any against them; they have not been granted the right to designate or consult with counsel of their choice; and they have not been granted access to the courts or any other impartial tribunal during their detention.

Guantanamo

30. Under the Lease of Lands for Coaling and Naval Stations, Feb. 16-23, 1903, U.S.-Cuba, T.S. No. 418, 6 Bevans 1113, as extended by the Treaty on Relations with Cuba, May 29, 1934, U.S.-Cuba, art. III, 48 Stat. 1682, 1683, T.S. No. 866, although the United States recognizes the sovereignty of Cuba over Guantanamo, "the Republic of Cuba consents that * * * the United States shall exercise complete jurisdiction and control over and within" Guantanamo during the lease. The United States has occupied Guantanamo Bay since 1903, and has repeatedly declared its intention to remain there indefinitely.

31. According to the Office of Legal Counsel of the Department of Justice, "the Guantanamo Base would constitute land 'acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof.' Accordingly, it would appear to come within [18 U.S.C.] § 7's definition of land 'within the special maritime and

territorial jurisdiction of the United States.'" 6 Op. O.L.C. 236, 1982 OLC LEXIS 58 (Mar. 29, 1982). Consistent with this opinion, criminal prosecutions under Title 18 of the United States Code of civilians and aliens who commit offenses at Guantanamo are triable exclusively in mainland United States courts. *See, e.g., United States v. Chambers*, 940 F.2d 653 (4th Cir. 1991), *unpublished opinion available at* No. 90-5664, 1991 WL 137232 (July 29, 1991); *United States v. Lee*, 906 F.2d 117, 117 n. 1 (4th Cir. 1990); *United States v. Rogers*, 388 F. Supp. 298, 301 (E.D. Va. 1975). *See also* 25 Op. Atty. Gen. 157 (1904) (Guantanamo Naval Station "is practically a part of the Government of the United States").

32. The United States Navy has described Guantanamo as "a Naval reservation which, for all practical purposes, is American territory. Under the [lease] agreements, the United States has for approximately [ninety] years exercised the essential elements of sovereignty over this territory, without actually owning it. Unless we abandon the area or agree to a modification of the terms of our occupancy, we can continue in the present status as long as we like. [According to the United States p]ersons on the reservation are amenable only to United States legislative enactments." *See* The History of Guantanamo Bay: An Online Edition (1964), available at http://www.nsgtmo.navy.mil/ history.htm.

Defendants' Statements About Detention at Guantanamo

33. According to a "Fact Sheet" issued by the White House on February 7, 2002, President Bush has determined that the principles of the Third Geneva Convention

of 1949 apply to the treatment of the "Taliban detainees" at Guantanamo, but not to the "al Qaida detainees" at Guantanamo. However, the President has determined that neither the "Taliban detainees" nor the "al Qaida detainees" will be accorded prisoner-of-war status.

34. Defendants have not publicly disclosed or informed plaintiffs whether any of the Kuwaiti Detainees are "Taliban detainees" or "al Qaida detainees," as those terms are used in the White House "Fact Sheet" of February 7, 2002.

35. In a radio interview on February 27, 2002, Secretary Rumsfeld said with respect to the approximately 300 detainees at Guantanamo: "[T]hey have all now, except for one or two, been questioned and interrogated, looking for intelligence information so that we could stop other terrorist threats, people from attacking our country and our friends and allies and our deployed forces and that "[w]e're now starting the process of doing a series of interrogations that involve law enforcement. That is to say to determine exactly what these individuals have done. Not what they know of an intelligence standpoint, but what they've done from a law enforcement standpoint. That process is underway." United States Department of Defense News Transcript, Rumsfeld Interview with KTSP-ABC, St. Paul, Minnesota, February 27, 2002, p. 2. Secretary Rumsfeld continued that the detainees "will fall into four or five baskets. One is if we find that someone's an innocent and shouldn't have been brought there, why they would be released." *Id.*

36. In a Pentagon news briefing on March 28, 2002, Secretary Rumsfeld said with respect to the detainees at Guantanamo: "The fact is that the first people we brought

down were in fact the hardest of the hard core, because we wanted to get them out of the Kandahar and Bagram facilities. Now we have brought down a large portion of the people, and now it is [a] mix, and they vary. They run pretty much across the spectrum. It seems to me that that being the case one can expect that what will happen will be exactly what I said: that some may be transferred to other countries, some may be released, some may be held for the duration, some may be tried in one or more of the various mechanisms that are available – the United States criminal justice system, military commissions, or the Uniform Code of Military Justice. * * * I think the better way to look at it is not at that group of people in the aggregate, but as I've indicated, individually." United States Department of Defense, News Transcript, DoD News Briefing – Secretary Rumsfeld and Gen. Myers, March 28, 2002, pp. 3, 4.

IV.
CLAIMS FOR RELIEF

Based on the allegations in paragraphs 1 through 36, plaintiffs claim:

First Claim: Denial of Due Process – Violation of the Fifth Amendment

37. By refusing to permit the Kuwaiti Detainees in Guantanamo to (1) meet with their families, (2) be informed of the charges, if any, against them, (3) designate and consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal, even during law enforcement interrogations which may lead to criminal proceedings against them, defendants have

denied and are denying the Kuwaiti Detainees fundamental due process, in violation of the Due Process Clause of the Fifth Amendment to the Constitution.

Second Claim: Tortious Conduct Within the Meaning of the Alien Tort Claims Act

38. By refusing to permit the Kuwaiti Detainees in Guantanamo to (1) meet with their families, (2) be informed of the charges, if any, against them, (3) designate and consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal, even during law enforcement interrogations which may lead to criminal proceedings against them, defendants have engaged and are engaging in arbitrary detention, which is tortious conduct in violation of the law of nations and a treaty of the United States, and actionable under the Alien Tort Claims Act, 28 U.S.C. § 1350.

Third Claim: Arbitrary and Unlawful Conduct – Violation of APA

39. By refusing to permit the Kuwaiti Detainees in Guantanamo to (1) meet with their families, (2) be informed of the charges, if any, against them, (3) designate and consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal, even during law enforcement interrogations which may lead to criminal proceedings against them, defendants have engaged and are engaging in arbitrary, unlawful, and unconstitutional conduct, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 555, 702, 706.

V.
PRAYER FOR RELIEF

Based on the allegations in paragraphs 1 through 39, plaintiffs pray for the following relief:

40. A preliminary and permanent injunction, enjoining defendants from refusing to permit the Kuwaiti Detainees at Guantanamo to (1) meet with their families, (2) be informed of the charges, if any, against them, (3) designate and consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal, subject to reasonable national security and safety requirements.

41. A declaration that defendants' refusal to permit the Kuwaiti Detainees at Guantanamo to 1) meet with their families, (2) be informed of the charges, if any, against them, (3) designate and consult with counsel of their choice, and (4) have access to the courts or some other impartial tribunal, subject to reasonable national security and safety requirements, is a violation of the Due Process Clause of the Fifth Amendment to the Constitution, tortious conduct under the Alien Tort Claims Act, and arbitrary, unlawful, and unconstitutional conduct in violation of the Administrative Procedure Act.

42. Reasonable attorneys' fees and the costs of this action, and such other and further relief as the Court may deem necessary or appropriate.

Respectfully submitted,

/s/ Thomas Wilner
Thomas B. Wilner
(D.C. Bar #173807)
Neil H. Koslowe
(D.C. Bar #361792)

Kristine A. Huskey
(D.C. Bar #462979)
Heather Lamberg Kafele
(D.C. Bar #473584)

SHEARMAN & STERLING
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone: (202) 508-8000
Facsimile: (202) 508-8100

Attorneys for Plaintiffs

Dated: July 8, 2002

[Certificate Of Service Omitted In Printing]

ICB

International Counsel Bureau

Abdul Rahman R. Al-Haroun &
Ghazi M. Al-Qahtani
Lawyers & Legal Consultants

DECLARATION OF
ABDUL RAHMAN R. AL-HAROUN

Pursuant to 28 U.S.C. section 1746, I, Abdul Rahman Al-Haroun depose and say that:

1. I am a graduate of Kuwait University and am a lawyer licensed to practice law in the State of Kuwait.

2. I have been retained by eleven Kuwaiti families (the families) whose sons (the sons) are missing and, based on my best information and belief, are being held in the custody of the Government of the United States. The names of the sons are listed in Attachment A.

3. All of the sons are Kuwaiti nationals who we believe were seized in Afghanistan or Pakistan after September 11, 2001 by local villagers seeking financial rewards from the United States and who were then turned over into the custody of the Government of the United States.

4. To the best of my knowledge and the knowledge of the families, none of the sons is or ever has been a member or supporter of the Taliban or of the Al Qaida terrorist organisation or of any other terrorist organisation.

5. All of the sons were in Afghanistan or Pakistan as volunteers for charitable purposes to provide aid to the people of those countries.

6. To the best of my knowledge and belief, no member of any of the families has ever been engaged in or supported any terrorist act or any hostile act against the United States.

7. On April 6, 2002 I visited the United States Embassy in Kuwait in an attempt to gather information about the sons. I was accompanied by Khalid Al Odah, the father of one of the sons and the head of a committee formed by all of the families concerned.

8. We were scheduled to meet with the United States Ambassador to Kuwait. However, we met with Mr. Andrew Morrison, First Secretary and Head of the Political Section of the Embassy, and with Mr. Yousef Khalil, a political specialist at the Embassy. We also expected to meet in a private room or office at the Embassy. Instead, the meeting was conducted in an open-air area outside the Embassy cafeteria where other people were eating and walking by.

9. Mr. Al Odah had earlier provided the Embassy with the first ten names on Attachment A seeking information about them. Based on information we had received from the Red Cross and from my Government, we believed all were being held in captivity by the Government of the United States. We did not have information at this point that the eleventh son on the list was also being detained by the United States Government.

10. At the meeting, we asked the U.S. representatives to provide us with any information about the ten individuals on the list we had given them. We asked them to confirm whether these people are in U.S. custody and, if so, to identify where they are being

held and to provide their families the right to contact and meet with them. We also asked whether any of the sons were being accused of any wrong doing and, if not, why they were not being released. We also requested, if they were being investigated, that they be provided with access to counsel of their choice and whether they could be released conditionally while any investigation continued.

11. At that meeting, the U.S. officials provided us with no information about the individuals on the list. They would neither confirm nor deny that any of the sons were being held by the Government of the United States.

12. Mr. Morrison did say that the United States was holding a number of persons in custody. He said that all the persons being held were captured in combat with the United States and are therefore prisoners of war. I pointed out that, under the Geneva Convention, prisoners at a minimum must be identified, have access to and be able to communicate and meet with their families and counsel of their choice. Mr. Morrison replied that it was unclear whether the United State would apply the rules of the Geneva Convention because the prisoners were not being detained in the United States. He said that the United States had the right to hold all these people in confinement "until the end of the war." He did promise to take our requests for information under consideration, to consult with others and to provide us with a reply.

13. To this date, we have received no reply from Mr. Morrison or from anyone else in the U.S. Embassy or from anyone else in the U.S. Government.

14. On April 3, we had received from the Government of Kuwait a copy of a letter it had received from the

U.S. Government indicating that six of the sons are being held in U.S. custody at the U.S facilities in Guantanamo Bay. A copy of that letter is attached as Attachment B. I should note that the English spellings of the names on the list provided by the U.S. Government differ somewhat from the spellings in Attachment A because they are phonetic spellings of Arabic names.

15. In addition, the family of a seventh son, Abdullah Saleh Ali Atallah Al Ajmi, recently received a letter from him from Guantanamo indicating that he is also being held there. Although the letter was only received recently, it was written on February 28 and mailed from Camp X-Ray at Guantanamo on March 1. It indicates that its author is from Kuwait. Nevertheless, Mr. Al Ajmi is not included on the list provided by the U.S. Government of Kuwaiti nationals being held at Guantanamo. We have also received information from the Red Cross and other sources that the remaining sons not included on the list provided by the U.S. Government are also being held at Guantanamo.

16. The families have sent many letters to the sons through the Red Cross and directly to Guantanamo. The letters the families have received from the sons indicate, however, that the sons have not received any of the letters sent to them.

17. Several of the families received letters from their sons after they had been turned over to U.S. authorities in Pakistan or Afghanistan. Those letters all express virtually the same sentiment: "Thank God I am now with the Americans," and a confidence that they would therefore soon be released to come home. I am sure they based those sentiments on their belief that the United States of all nations would not only treat them humanely, but also conduct any investigation

fairly and impartially, in accordance with the principles that the United States has championed around the world.

18. I and the families I represent sympathise deeply with the citizens of the United States who suffered so terribly as a result of the tragedy of September 11. We unequivocally abhor the terrorist acts that caused that tragedy. And we also want the individuals responsible for these acts brought to justice. I believe, however, that justice can be accomplished only when fundamental principles of justice are applied.

19. Article 31 of the Constitution of the State of Kuwait explicitly prohibits any person from being arrested or detained except in accordance with law, which requires that any person detained must be promptly charged or released and have the right to counsel of his or her choice and, if he or she has no counsel, one will be appointed for him or her. I understand that these are fundamental principles in every civilised nation and, in fact, that they are originally derived from principles of Anglo-American jurisprudence.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 24, 2002.

/s/ Abdul Rahman R. Al-Haroun
Abdul Rahman R. Al-Haroun

ATTACHMENT A

1. Fawzi Khalid Abdullah Fahad Al Odah
2. Omar Rajab Amin

3. Nasser Nijer Naser Al Mutairi
4. Khalid Abdullah Mishal Al Mutairi
5. Abdullah Kamal Abdullah Kamal Al Kandari
6. Abdulaziz Sayer Owain Al Shammari
7. Abdullah Saleh Ali Al Ajmi
8. Mohammed Funaitel al Dihani
9. Fayiz Mohammad Ahmed al Kandari
10. Fawd Mahmoud al Rabiah
11. Adil Zamil Abdull Mohssin Al Zamil

Attachment B

[SEAL]

Embassy of the United States of America

Kuwait City, Kuwait

March 25, 2002

Mr. Khalid Al-Maqamis
Director, Coordination & Follow Up Department
Ministry of Foreign Affairs
Kuwait City
State of Kuwait

Dear Mr. Al-Maqamis:

As discussed during our conversation today, I have enclosed the following information about the detainees in Guantanamo:

1. Military Commission Procedures
2. Fact Sheet on Military Commission

3. Biographic data on six detainees at Guantanamo, as given by the detainees

Thank you.

Sincerely,

/s/ William T. Monroe
William T. Monroe
Deputy Chief of Mission

Enclosure a/s

MILITARY COMMISSION PROCEDURES

– THE SECRETARY OF DEFENSE IS FINALIZING THE PROCEDURES GOVERNING U.S. MILITARY COMMISSIONS THAT MAY BE ESTABLISHED TO TRY SUSPECTED INTERNATIONAL TERRORISTS AND THEIR SUPPORTERS FOR VIOLATIONS OF THE LAW OF WAR. THE PRESIDENT HAD DIRECTED HIM TO PREPARE SUCH RULES IN THE MILITARY ORDER OF NOVEMBER 13. THE RULES WERE MADE PUBLIC ON THURSDAY, MARCH 21.

– WE BELIEVE THAT YOUR GOVERNMENT SHOULD BE PLEASED WITH THE OUTCOME.

– THE PROCEDURES TAKE INTO ACCOUNT THAT MANY COMMENTS THAT WE HAVE RECEIVED FROM OUR ALLIES, AS WELL HAS HUMAN RIGHTS GROUPS AND OTHER NONGOVERNMENTAL ORGANIZATIONS.

– THE MILITARY COMMISSIONS WILL BE IMPARTIAL. THEY WILL PROVIDE FULL AND FAIR TRIALS. WE BELIEVE THAT THE PROCEDURES FOR THE

COMMISSIONS PROVIDE APPROPRIATE DUE PROCESS SAFEGUARDS. THEY ARE CONSISTENT WITH FUNDAMENTAL INTERNATIONAL STANDARDS GOVERNING CRIMINAL TRIALS.

THEY ARE CONSISTENT WITH THE PROCEDURAL SAFEGUARDS FOUND IN THE GENEVA CONVENTIONS OF 1949 AND ARTICLE 75 OF PROTOCOL 1 OF 1977 TO THE GENEVA CONVENTIONS. (THE UNITED STATES IS NOT A PARTY TO THE PROTOCOL.)

– ALTHOUGH THE PROCEDURES ADDRESS A DIFFERENT BODY OF LAW, THEY ARE ALSO CONSISTENT WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

– IN PARTICULAR, THE PROCEDURES INCLUDE THE FOLLOWING:

- THE PRESUMPTION OF INNOCENCE
- CHOICE OF MILITARY AND CIVILIAN COUNSEL
- THE HIGH STANDARD OF PROOF OF GUILT BEYOND A REASONABLE DOUBT
- THE DEATH PENALTY CAN ONLY BE IMPOSED BY A UNANIMOUS DECISION OF A 7 MEMBER PANEL
- REVIEW BY AN IMPARTIAL, 3 MEMBER PANEL (POSSIBLY INCLUDING CIVILIANS WHO ARE TEMPORARILY COMMISSIONED

THE ACCUSED IS NOT REQUIRED TO TESTIFY, AND NO ADVERSE INFERENCE MAY BE DRAWN FROM A REFUSAL TO TESTIFY.

THE ACCUSED MAY PRESENT EVIDENCE IN HIS DEFENSE AND MAY CROSS-EXAMINE WITNESSES PRESENTED BY THE PROSECUTION.

PROCEEDINGS WILL BE OPEN TO THE PUBLIC "TO THE MAXIMUM EXTENT PRACTICABLE" (BUT THEY CAN BE CLOSED TO PROTECT NATIONAL SECURITY AND OTHER INTERESTS). AT ALL TIMES, INCLUDING IN ANY CLOSED PROCEEDINGS, THE ACCUSED WILL BE REPRESENTED BY COUNSEL, AND DEFENSE COUNSEL WILL HAVE ACCESS TO ANY CLASSIFIED EVIDENCE ADMITTED AT TRIAL.

– THE PROSECUTION WILL PROVIDE THE ACCUSED WITH ACCESS TO EVIDENCE THE PROSECUTION INTENDS TO INTRODUCE AT TRIAL AND WITH ACCESS TO EVIDENCE KNOWN TO THE PROSECUTION THAT IS INCONSISTENT WITH THE ALLEGED GUILT OF THE ACCUSED.

– THE REVIEW PANEL HAS THE AUTHORITY TO RETURN THE CASE FOR FURTHER PROCEEDINGS IF A MAJORITY OF ITS MEMBERS HAVE A DEFINITE AND FIRM CONVICTION THAT A MATERIAL ERROR OF LAW OCCURRED.

– NO INDIVIDUALS HAVE YET BEEN DESIGNATED FOR TRIAL BY MILITARY COMMISSION AND NO MILITARY COMMISSIONS HAVE YET BEEN ESTABLISHED.

– THE U.S. GOVERNMENT REMAINS INTERESTED IN KNOWING AS MUCH DETAIL AS HOST GOVERNMENT CAN PROVIDE ON THE LEGAL STEPS THE HOST GOVERNMENT MAY BE PREPARED TO TAKE

AGAINST YOUR CITIZENS IN U.S. CONTROL AT GUANTANAMO BAY.

Department of Defense Order on Military Commissions

A military commission is a war-time, military tribunal traditionally used to try violations of the laws of war. Under the President's Military Order of November 13, 2001, those tried by military commission may include:

– Members of al Qaeda

– People involved in acts of international terrorism against the United States

– People who knowingly harbored such terrorists

Commission Membership and Selection:

– Commissions will consist of at least 3 but no more than 7 members, with one or two alternates.

– The Secretary of Defense may appoint members and other commission personnel, or select an Appointing Authority to choose commission personnel.

– Commission members are officers in the United States Armed Forces, including reserve personnel, National Guard members, and retired personnel recalled to active duty.

– A Presiding Officer will be chosen from among the commission members to preside over commission proceedings. The Presiding Officer will be a judge advocate of any branch of the armed forces.

– The Presiding Officer has the authority to admit or exclude evidence.

– The Presiding Officer also has the authority to close proceedings to protect classified information or to protect the safety of defendants, witnesses, and commission members.

– A Full and Fair Trial

– A Military defense counsel will be provided for the accused. In addition, the accused may choose their own counsel: another military officer who is a judge advocate of the U.S. Armed Forces or a civilian attorney. Civilian attorneys may be pre-qualified as members of a pool of available attorneys for the defense.

– The defendant and counsel will be able to see copies of the charges in their native language in advance of the trial.

– The accused is presumed innocent until proven guilty.

– The accused may be found guilty only when commission members are convinced of guilt beyond a reasonable doubt.

– The accused may refuse to testify during trial.

– The accused will be able to obtain witnesses and documents to use in his defense.

– The accused may not be tried twice before a military commission for the same offense.

– The accused may enter into a plea agreement.

– Trial Format

– Trial proceedings will be open unless otherwise determined by the Presiding Officer. The Presiding Officer may also allow attendance by the public and press. Photography, video and audio recording and broadcasting will be prohibited.

– A trial may be closed to protect:

  – Classified or sensitive information

  – The physical safety of participants

  – Intelligence or law enforcement sources, methods and activities

  – National security interests

– Commissions will be impartial.

– Evidence, including previous trial testimony and written statements, will be admissible if it would have probative value to a reasonable person.

– Witnesses will testify under oath, and will be subject to direct and cross-examination.

– For witness safety, some testimony may be accepted by phone, through the use of pseudonyms, or during closed proceedings.

– Commission members will deliberate and vote on findings of guilt, innocence, and sentencing in closed conference.

– A conviction requires a vote of two-thirds of the commission.

– A death sentence requires a unanimous vote.

– Sentences may also include life imprisonment or a lesser term, fines and restitution, or any other punishment deemed appropriate.

– A three-member Review Panel, appointed by the Secretary of Defense, will review trial findings within 30 days and either provide a recommendation to the Secretary of Defense or return the case for further proceedings. The panel will include three military officers but may also include civilians temporarily commissioned as military officers.

– Findings and sentences are not final until approved by the President or Secretary of Defense, but findings of "Not Guilty" cannot be changed.

– The procedures may be amended by the Secretary of Defense to accommodate changed circumstances.

BIOGRAPHIC DATA ON DETAINEES

Name: AMIN, OMAR R.
Date Arrived in Guantanamo: 11 January 2000
Date of Birth: 14 June 1967
Nationality: Kuwait
No further information.

Name: AMTIRI, NASSER NAJIRI
Date Arrived in Guantanamo: 7 February 2002
Date of Birth initially reported as: 1977
Date of Birth also reported as: 1978
Nationality: Kuwait
City of Birth: Hamati
Country of Birth: Kuwait
Home City: Hamuti, Kuwait

(Note: two different spellings of apparently same city "Hamati" and "Hamuti")
Language Skills: Arabic
Religion: Muslim
Name of Next of Kin: Najar
Address of Next of Kin: Sabahi, Section 3, Street 3, House 386, Hamati, Kuwait

Name: AL-MUTAYRI, KHALID ABDULLAH MIJSH'AD
Date Arrived in Guantanamo: 9 February 2002
Date of Birth: 18 June 1975
Nationality: Kuwait
City of Birth: Kuwait City
Country of Birth: Kuwait
Home City: Kuwait City, Kuwait
Language Skills: Arabic
Religion: Muslim
Name of Next of Kin: Abdullah Mishad Al-Mutayri
Address of Next of Kin: Section 1, Street 124, House 6, Kuwait City, Kuwait

Name: KAMEL, ABDULLAH KAMEL, ABDULLAH
Date Arrived in Guantanamo: 11 February 2002
Date of Birth: 1973-09-07
Nationality: Kuwait
City of Birth: Hawali
Country of Birth: Kuwait
Home City: Jadah, Kuwait
Language Skills: Arabic, English
Religion: Muslim
Name of Next of Kin: Kamel
Address of Next of Kin: Section 11, 1st Street, Alley 11, House 43, Saba Salim Jada, Kuwait
Name/Address of Notified: Section 11, 1st Street, Alley 11, House 43, Saba Salim Jada, Kuwait

Name: AL AWDA, FOWZI KHALID ABDULLAH
Date Arrived in Guantanamo: 13 February 2002
Date of Birth: 6 June 1977
Nationality: Kuwait
City of Birth: Kuwait City
Country of Birth: Kuwait
Home City: Kuwait City, Kuwait
Language Skills: Arabic, some English
Religion: Muslim
Name of Next of Kin: Khalid
Address of Next of Kin: Qarteba, Third Street, House 13, Kuwait City, Kuwait Name/Address of Notified: Qarteba, Third Street, House 13, Kuwait City, Kuwait

Name: AL-SHAMARI, ABD AL-AZIZ SAYIR
Date Arrived in Guantanamo: 9 February 2002
Date of Birth: 23 September 1973
Nationality initially reported as: Kuwait
Nationality also reported as: Yemen
City of Birth: Fahaheel
Country of Birth: Kuwait
Home City: Airaqa, Kuwait
Language Skills: Arabic
Religion: Muslim
Name of Next of Kin: Sayir
Address of Next of Kin: Airaqa, 21st Street, House 172, Kuwait

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DECLARATION OF THE BLOOD RELATIVES OF THOSE KUWAITI NATIONALS HELD IN UNITED STATES CUSTODY

Pursuant to 28 U.S.C. Section 1746, we depose and say that:

1. We are each the blood relatives of the individuals listed below. Based on our best information and belief, all of those individuals are being held under the custody of the Government of the United States.

2. We have received information from the Government of Kuwait that the U.S. Government has informed it that the following of our family members are being held in U.S. custody at Guantanamo Bay: Omar Rajab Amin, Nasser Nijer Naser Al Mutairi, Khalid Abdullah Mishal Al Mutairi, Abdullah Kamal Abdullah Kamal Al Kandari, Fawzi Khalid Abdullah Fahad Al Odah and Abdulaziz Sayer Owain Al Shammari.

3. We have also recently received information through the Red Cross and other sources that the remaining five family members are also being held in U.S. custody at Guantanamo Bay: Mohammed Funaitel al Dihani, Fayiz Mohammed Ahmed Al Kandari, Fwad Mahmoud Al Rabiah Abdullah Saleh Ali Al Ajmi and Adil Zamil Abdull Mohssin Al Zamil

4. None of our family members named above is able to contact counsel or submit papers to this or any other court on their own behalf because they are being held virtually incommunicado.

5. Because we are the closest blood relatives of the individuals named below, and because we

deeply love them, we are acting on their behalf to protect their rights and to seek their ultimate release. It is our belief they want us to do so.

6. We have jointly retained Abdul Rahman R. Al-Haroun to secure American counsel and to take whatever steps are necessary to protect our family members' legal rights and to seek their release. Mr. Al-Haroun has our full authority to do so and to take any necessary steps in the courts of the United States to accomplish those goals.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 25, 2002

Name of Detainee	Family Member's Name & Relationship	Signature
Omar Rajab Amin	Mohammad R. M. R. Ameen (Brother)	/s/ Ameen
Nasser Nijer Naser Al Mutairi	Nayef N. N. B. J. Al Mutairi (Brother)	/s/ Al Mutairi
Khalid Abdullah Mishal Al Mutairi	Meshal A. M. TH Al Mutairi (Brother)	/s/ Al Mutairi
Abdullah Kamal Abdullah Kamal Al Kandari	Mansour K. A. Kamel (Brother)	/s/ A. Kamel
Fawzi Khalid Abdullah Fahad Al Odah	Khaled A. F. Al Odah (Father)	/s/ Al Odah

Abdulaziz Sayer Owain Al Shammari	Sayer O. Z. Al Shammari (Father)	/s/ Al Shammari
Mohammed Funaitel Al Dihani	Mubarak F. S. M. Al Daihani (Brother)	/s/ Al Daihani
Fayiz Mohammad Ahmed Al Kandari	Mohammad A. J. M. H. Al Kandari (Father)	/s/ Al Kandari
Fwad Mahmoud Al Rabiah	Monzer M. H. A. Al Rabieah (Brother)	/s/ Al Rabieah
Abdullah Saleh Ali Al Ajmi	Mesfer Saleh Ali Al Ajmi (Brother)	/s/ Al Ajmi
Adil Zamil Abdull Mohssin Al Zamil	Walid Z. A. Al Zamel (Brother)	/s/ Al Zamel

DECLARATION OF THE BLOOD RELATIVES OF THOSE KUWAITI NATIONALS HELD IN UNITED STATES CUSTODY

Pursuant to 28 U.S.C. section 1746, we depose and say that:

1. I am the brother of Sa'ad Madai Saad Hawash Al Azmi. Based on my best information and belief that my brother being held under the custody of the Government of the United States.

2. I have received information from the Government of Kuwait that the U.S. Government has informed it that my brother being held in U.S. custody at Guantanamo Bay.

3. My brother is not able to contact counsel or submit papers to this or any other court on his own behalf because he is being held virtually incommunicado.

4. Because I am the closest blood relative of Sa'ad M. S. H. Al Azmi, and because I deeply love him, I am acting on his behalf to protect his rights and to seek his ultimate release. It is my belief that he wants me to do so.

5. I have jointly retained Abdul Rahman R. Al-Haroun to secure American counsel and to take whatever steps are necessary to protect my brother's legal rights and to seek his release. Mr. Al-Haroun has my full authority to do so and to take any necessary steps in the courts of the United States to accomplish those goals.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 20, 2002

For and on behalf of Sa'ad Madai Saad Hawash Al Azmi

/s/ Al Azemi
Hamad M. S. H. Al Azemi

Relationship: Brother

GENERAL DOCKET

US Court of Appeals for the DC Circuit

RASUL, et al v. BUSH, et al

9/11/02 CIVIL-US CASE docketed. Notice of Appeal filed by the Appellants Shafiq Rasul, Skina Bibi, Asif Iqbal, Mohammed Iqbal, David Hicks, and Terry Hicks. [701261-1] (jth) [02-5288]

* * *

9/12/02 MOTION filed (5 copies) by Appellants Shafiq Rasul, et al., (certificate of fax/mail service dated 9/12/02) to expedite [701783-1]. (jth) [02-5288]

9/12/02 MOTION filed (5 copies) by Appellants Mamdouh Habib, et al. in 02-5284, and Appellants Shafiq Rasul in 02-5288, et al., in 02-5288 (certificate of fax/mail service dated 9/12/02) to consolidate these cases [701789-1]. [02-5284, 02-5288] (jth) [02-5284 02-5288]

9/13/02 PER CURIAM ORDER filed [701827-1] granting the motion to consolidate No. 02-5284 with No. 02-5288 [701789-1]. It is FURTHER ORDERRED that the motions to expedite [701779-1], [701783-1] be granted. FURTHER ORDERED, on the court's own motion, that consolidated Nos. 02-5284 and 02-5288 be consolidated with No. 02-5251 [701827-1]. FURTHER ORDERED that the following briefing format and schedule apply in all three consolidated cases [701827-3]: Joint Brief for Appellants Habib and Rasul (not to exceed 14,000 words) due on 9/24/02; Brief for Appellant Odah (not to exceed 14,000 words) due on 9/24/02; Joint Appendix due on 9/24/02; Appellees' Brief (not to exceed 14,000 words) due on 10/18/02; Joint Reply Brief for Appellants

Habib and Rasul (not to exceed 7,000 words) due on 10/29/02, Reply Brief for Appellant Odah (not to exceed 7,000 words) due on 10/29/02. Absent extraordinarily compelling circumstances, the court will not grant any modification of these provisions. The parties are directed to file and serve their briefs by hand. The oral argument date and composition of the mertis [sic] panel will be established by separate order. Before Judges: Edwards, Rogers and Tatel. [Entry Date: 9/13/02] [02-5251, 02-5284, 02-5288] (jth) [02-5251 02-5284 02-5288]

* * *

9/13/02 INITIAL SUBMISSIONS filed by Appellees George W. Bush, et al., in No. 02-5288 [702187-1]: Certificate of Counsel. (jth) [02-5288]

9/20/02 CLERK'S ORDER filed [703458] to schedule oral argument [703458-1] before Judge Initials: APR MBG SFW on 12/2/02 at 9:30 AM. [Entry Date: 9/20/02] [02-5251, 02-5284, 02-5288] (cwc) [02-5251 02-5284 02-5288]

9/24/02 BRIEF filed by Appellants Mamdouh Habib, et al in 02-5284, and Appellants Shafiq Rasul, et al in 02-5288 [704213-1]. Copies: 15. Certificate of personal service date 9/24/02. [02-5284, 02-5288] (jlp) [02-5284 02-5288]

9/25/02 JOINT APPENDIX filed [704252-1]. Copies: 10. Certificate of e-mail service dated 9/24/02. [02-5251, 02-5284, 02-5288] (jlp) [02-5251 02-5284 02-5288]

9/30/02 MOTION filed (5 Copies) (certificate of service dated 9/30/02) to allow amicus curiae [705085-1]. Response due on 10/10/02. Motion filed by

Intl Ctr Leg Protc. [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/1/02 NOTICE filed of intention to participate as amicus curiae [705156-1] by Bar Human Rights Com, et al. Certificate of service date 9/30/02. [02-5284, 02-5288] (sha) [02-5284 02-5288]

10/1/02 BRIEF filed by Amicus Curiae for Appellant Bar Human Rights Com, et al. [705161-1]. Copies: 14. Certificate of service date 9/30/02. [02-5284, 02-5288] (sha) [02-5284 02-5288]

10/7/02 NOTICE filed of intention to participate as amicus curiae [706580-1] by Natl Assn Cr Def Law in 02-5288 styled as "Notice of Motion and Motion for Leave to File Brief as Amicus Curiae". Certificate of service date 10/7/02. (sha) [02-5288]

10/7/02 BRIEF lodged by Amicus Curiae for Appellant Natl Assn Cr Def Law in 02-5288 [706585-1]. Copies: 7. Certificate of service date 10/7/02. (sha) [02-5288]

10/8/02 CORRECTED BRIEF filed by Amicus Curiae for Appellant Natl Assn Cr Def Law in 02-5288 [706746-1]. Copies: 15. Certificate of service date 10/7/02. (sha) [02-5288]

10/17/02 PER CURIAM ORDER filed [708343] denying non-party motion to allow amicus [705085-1] filed by Intl Ctr Leg Protc, without prejudice to renewal upon the submission, within 7 days of the date of this order, of a brief signed by a member of the Bar of this court. [707626-1]. Before Judges Randolph, Garland, Williams. [Entry Date: 10/17/02] [02-5251, 02-5284, 02-5288] (cwc) [02-5251 02-5284 02-5288]

10/18/02 BRIEF filed by Appellee USA, et al. [708807-1]. Copies: 15. Certificate of service date 10/18/02. [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/18/02 SUPPLEMENTAL APPENDIX lodged by Appellee USA, et al. [708809-1]. Copies: 10. Certificate of service date 10/18/02. [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/21/02 MOTION filed (5 Copies) by Appellee USA, et al. (Certificate of service dated 10/21/02) for leave to file [708897-1] a supplemental appendix [708809-1]. [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/24/02 MOTION filed (5 Copies) (certificate of service dated 10/24/02) to allow amicus curiae [710058-1]. Motion filed by Intl Ctr Leg Protc [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/24/02 BRIEF lodged by Movant-Amicus Curiae-Appellant Intl Ctr Leg Protc [710060-1]. Copies: 15. Certificate of service date 10/24/02. [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

10/25/02 NOTICE filed of intention to participate as amicus curiae [711010-1] by WA Leg Fdn, Allied Educ Fdn, Jewish Inst Natl Sec in 02-5284 and 02-5288. (sha) [02-5284 02-5288]

10/25/02 BRIEF filed by Amicus Curiae for Appellee WA Leg Fdn, et al. in 02-5284 and 02-5288 [711015-1]. Copies: 15. Certificate of service date 10/25/02. [02-5284, 02-5288] (sha) [02-5284 02-5288]

10/29/02 CORRECTED BRIEF filed by Appellants Mamdouh Habib, et al. in 02-5284 and 02-5288 [710996-1]. Copies: 15. Certificate of service date 10/29/02. [02-5284, 02-5288] (sha) [02-5284 02-5288]

10/29/02 REPLY BRIEF filed by Appellants Mamdouh Habib, et al. in 02-5284 and 02-5288 [710997-1]. Copies: 15. Certificate of service date 10/29/02. [02-5284, 02-5288] (sha) [02-5284 02-5288]

11/13/02 CLERK'S ORDER filed [713263] granting appellees' motion for leave to file a supplemental appendix and granting motion of the International Centre for the Legal Protection of Human Rights for leave to file an amicus curiae brief; Clerk directed to file the lodged supplemental appendix and the lodged brief. [710058-1] [708897-1] [710060-1] [708809-1] [Entry Date: 11/13/02] [02-5251, 02-5284, 02-5288] (cwc) [02-5251 02-5284 02-5288]

11/13/02 PER ABOVE ORDER lodged supplemental appendix is filed. [708809-1] [02-5251, 02-5284, 02-5288] (cwc) [02-5251 02-5284 02-5288]

11/13/02 PER ABOVE ORDER lodged brief of amicus curiae is filed. [02-5251, 02-5284, 02-5288] (cwc) [02-5251 02-5284 02-5288]

11/19/02 LETTER filed by Appellants Khaled A. F. Al Odah, et al., pursuant to FRAP 28j advising of additional authorities [715282-1]. Certificate of service date 11/19/02. [02-5251, 02-5284, 02-5288] (cwc) [02-5251 02-5284 02-5288]

11/21/02 PER CURIAM ORDER filed [715254] to allocate oral argument times: APET minutes-15 ERES minutes-15. [715254-1], one counsel per side to argue. [715254-2] Oral argument

scheduled for 12/2/02, Form 72 notice of attorney arguing case – [715254-3] due 11/26/02. [Entry Date: 11/21/02] [02-5251] (cwc) [02-5251 02-5284 02-5288]

11/22/02 MOTION filed (5 copies) by Appellants Khaled A. F. Al Odah, et al., in No. 02-5251, (certificate of mail service dated 11/22/02) to permit two counsel for appellants to present oral argument and for additional argument time [715948-1]. [02-5251, 02-5284, 02-5288] (jth) [02-5251 02-5284 02-5288]

* * *

11/25/02 MOTION filed (5 copies) by Appellants Mamdouh Habib, et al. in 02-5284 and Appellants Maha Habib, et al. in 02-5284, (certificate of service dated 11/25/02) to enlarge oral argument and to allow separate argument from appellant's in case No. 02-5251 [716113-1]. [02-5284, 02-5288] (sha) [02-5284 02-5288]

11/26/02 PER CURIAM ORDER filed [716447] denying motion of appellants Rasul, et al. and Habib to enlarge oral argument and to allow separate argument from appellants in 02-5251; Granting motion of appellants Al Odah, et al. to permit two counsel for appellants to present oral argument and for additional time; The following revised allocation of argument times shall now apply: Appellants Al Odah, et al. – 10 minutes; Appellants Rasul, et al. and Habib – 10 minutes; Appellees – 20 minutes. [716113-1] [715948-1] [716447-1] [Entry Date: 11/26/02] [02-5251, 02-5284, 02-5288] (cwc) [02-5251 02-5284 02-5288]

* * *

12/2/02 ORAL ARGUMENT HELD before Randolph, Garland, Williams. [02-5251, 02-5284, 02-5288] (set) [02-5251 02-5284 02-5288]

12/17/02 TRANSCRIPT of oral argument held on 12/2/02. [701259-1] [02-5251, 02-5284, 02-5288] (sha) [02-5251 02-5284 02-5288]

2/11/03 TRANSCRIPT of oral argument held on 12/2/02. [701259-1] [02-5251, 02-5284, 02-5288] (jth) [02-5251 02-5284 02-5288]

3/11/03 JUDGMENT that the judgment of the district court dismissing the complaint in No. 02-5251 and the petitions for habeas corpus in Nos. 02-5284 and 02-5288 for lack of jurisdiction is affirmed for the reasons in the accompanying opinion. Before Judges Randolph, Garland, Williams. [Entry Date: 3/11/03] [02-5251, 02-5284, (mcm) [02-5251 02-5284 02-5288]

3/11/03 OPINION filed [737182] (18 pgs) for the Court by Judge Randolph, CONCURRING OPINION (9 pgs) filed by Judge Randolph [02-5251, 02-5284, 02-5288] (mcm) [02-5251 02-5284 02-5288]

3/11/03 CLERK'S ORDER filed [737183] The Clerk is directed to withhold issuance of the mandate [737183-1] pending disposition of any timely petition for rehearing. [Entry Date: 3-11-03] [02-5251, 02-5284, 02-5288] (mcm) [02-5251 02-5284 02-5288]

4/25/03 PETITION for rehearing [746029-1], Petition for Rehearing en banc [746029-2] in Case No. 02-5251 (20 copies) filed by Appellants Khaled A. F. al Odah, et al., in No. 02-5251. (certificate of hand-delivery service dated 4/25/03). [02-5251, 02-5284, 02-5288] (jth) [02-5251 02-5284 02-5288]

4/25/03 PETITION for rehearing [746031-1], PETITION for rehearing en banc [746031-2] in Nos. 02-5284, 02-5288 (20 copies) filed by Appellants Mamdouh Habib, et al., in appeal No. 02-5284, and by Appellants in Shafiq Rasul, et al., in No. 02-5288 (certificate of hand-delivery service dated 4/25/03) [02-5251, 02-5284, 02-5288] (jth) [02-5251 02-5284 02-5288]

6/2/03 PER CURIAM ORDER, In Banc, filed [752207] denying suggestion rehearing en banc [746029-2] filed by Khaled A. F. Al Odah, et al. Before Judges Ginsburg, Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, Williams. [Entry Date: 6/2/03] [02-5251, 02-5284, 02-5288] (mcm) [02-5251 02-5284 02-5288]

6/2/03 PER CURIAM ORDER filed [752209] denying petition rehearing [746029-1] filed by Khaled A. F. Al Odah, et al. Before Judges Randolph, Garland, Williams. [Entry Date: 6/2/03] [02-5251, 02-5284, 02-5288] (mcm) [02-5251 02-5284 02-5288]

6/2/03 PER CURIAM ORDER, In Banc, filed [752211] denying suggestion rehearing en banc [746031-2] filed by Mamdouh Habib, et al. Before Judges Ginsburg, Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, Garland, Williams. [Entry Date: 6/2/03] [02-5251, 02-5284, 02-5288] (mcm) [02-5251 02-5284 02-5288]

6/2/03 PER CURIAM ORDER filed [752213] denying petition rehearing [746031-1] filed by Mamdouh Habib, et al. (Mandate may on or after 6/10/03 in 02-5251, et al.) Before Judges Randolph, Garland, Williams. [Entry Date: 6/2/03] [02-5251, 02-5284, 02-5288] (mcm) [02-5251 02-5284 02-5288]

6/23/03 MANDATE ISSUED to Clerk, District Court [755787-1] [02-5251, 02-5284, 02-5288] (mcm) [02-5251 02-5284 02-5288]

9/8/03 NOTICE filed by Clerk, US Supreme Court tha [sic] a petition for writ of certiorari was file [sic] in this case on 9/2/03 and placed on the docket as No. 03-334 [771159-1]. [02-5251, 02-5284, 02-5288] (jlp) [02-5251 02-5284 02-5288]

9/10/03 NOTICE filed by Clerk, Supreme court adivsing [sic] of the filing on 9/2/03 and docketing on 9/5/03 of a petition for writ of certiorari [772035-1]. Supreme Court Docket No. 03-343. [02-5251, 02-5284, 02-5288] (jth) [02-5251 02-5284 02-5288]

11/14/03 NOTICE filed by Clerk, Supreme Court advising of the entry of an order on 11/10/03, granting the petition for writ of certiorari, limited to the following question: Whether United States Courts lack jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at he [sic] Guantanamo Bay Naval Base, Cuba. This case is consolidated with No. 03-343 (Al Odah, et al. v. USA, et al.) and a total of 1 hour is allotted for oral argument [785121-1]. SUPREME COURT DOCKET NUMBER 03-334. [02-5251, 02-5284, 02-5288] (jth) [02-5251 02-5284 02-5288]

11/14/03 NOTICE filed by Clerk, Supreme Court advising of the entry of an order on 1/10/03, granting the petition for writ of certiorari, limited to the following question: Whether United States Courts lack jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad in connection with

hostilities and incarcerated at the Guantanamo Bay Naval Base, Cuba. This case is consolidated with No. 03-334 (Rasul v. Bush) and a total of one (1) hour is allotted for oral argument [785336-1]. SUPREME COURT'S DOCKET NUMBER IS 03-343. [02-5251, 02-5284, 02-5288] (jth) [02-5251 02-5284 02-5288]

U.S. District Court

USDC District of Columbia (Washington)

CIVIL DOCKET FOR CASE #: 02-CV-299

RASUL, et al v. BUSH, et al

DATE	#	DOCKET ENTRY
2/19/02	1	PETITION filed by petitioner SHAFIQ RASUL, petitioner SKINA BIBI, petitioner ASIF IQBAL, petitioner MOHAMMED IQBAL, petitioner DAVID HICKS, petitioner TERRY HICKS for writ of habeas corpus; affidavits (6), exhibits (6) (cdw) [Entry date 02/20/02] [1:02cv299]
		* * *
2/21/02	14	RETURN OF SERVICE/AFFIDAVIT of petition for writ of habeas corpus executed on 2/19/02 upon respondent GEORGE WALKER BUSH, respondent DONALD RUMSFELD, respondent MICHAEL LEHNERT, respondent TERRY CARRICO (cdw) [Entry date 02/26/02] [1:02cv299]
2/21/02	15	RETURN OF SERVICE/AFFIDAVIT of petition for writ of habeas corpus executed upon U.S. Attorney on 2/19/02 (cdw) [Entry date 02/26/02] [Edit date 02/26/02] [1:02cv299]
2/21/02	16	RETURN OF SERVICE/AFFIDAVIT of petition for writ of habeas corpus executed upon U.S. Attorney General on 2/19/02 (cdw) [Entry date 02/28/02] [1:02cv299]

2/25/02	7	ORDER by Judge Colleen Kollar-Kotelly: that pursuant to 28 USC 2243, respondents, by counsel, shall file with the Court and serve on petitioners' attorneys, a return certifying the true cause of the petitioners' detention on 3/18/02. This return shall show cause why a writ of habeas corpus and the relief sought by petitioners should not be granted. Petitioners, by counsel, shall file with the Court and serve on petitioners' attorneys a reply brief not later than 4/8/02. Any motion relating to providing notice of this matter to petitioners and providing access of counsel to petitioners should be filed with the Court and served on respondents' attorneys, by petitioners, through counsel, not later than 3/4/02. An opposition to any motion relating to providing notice of this matter to petitioners and providing access of counsel to petitioners shall be filed with the Court and served on petitioners' attorneys, by respondents, through counsel, not later than 3/18/02. Respondents' return to petitioners' writ of habeas corpus may serve as the appropriate brief to file such opposition. A reply relating to providing notice of this matter to petitioners and providing access of counsel to petitioners should be filed with the Court and served on respondents' attorneys, by petitioners, through cousel, not later than 4/8/02. A copy of the petition shall be served upon respondents through the United States Attorney for the District of Columbia by hand delivery to Roscoe C. Howard, Jr. at the Office of the United States Attorney for the District of Columbia, 555 Fourth Street, NW, Washington, DC

20001, by the close of business on Wednesday, February 27, 2002. All filings in this case shall be served on counsel by hand delivery. Petitioners shall hand deliver filings to Roscoe C. Howard, Jr., at the Office of the United States Attorney for District of Columbia, 555 Fourth Street, NW, Washington, DC 20001. Respondents shall hand deliver filings to L. Barrett Boss, Asbill, Junkin, Moffitt & Boss, Chartered, Suite 200, 1615 New Hampshire Avenue, NW, Washington, DC 20009. The Court shall promptly be provided with a courtesy copy, in Chambers, of all filings in the above-captioned matter. (N) (dot) [1:02cv299]

* * *

2/25/02 20 NOTICE OF FILING by petitioner SHAFIQ RASUL cover letters dated 2/19/02 addressed to defendants and non-parties US Attorney, US Attorney General (cdw) [Entry date 02/27/02] [1:02cv299]

* * *

3/1/02 28 MOTION filed by petitioners for access to counsel (cdw) [Entry date 03/26/02] [1:02cv299]

3/4/02 27 MOTION filed by petitioners for order to provide the detained clients with notice of the pending litigation (cdw) [Entry date 03/26/02] [1:02cv299]

3/12/02 22 MOTION filed by petitioners for leave to file an amended petition for a writ of habeas corpus; EXHIBIT (AMENDED PETITION) (cdw) [Entry date 03/14/02] [1:02cv299]

3/15/02 24 TRANSCRIPT of telephone conference filed for date(s) of 2/25/02. Reporter: Edward N.

Hawkins, RMR (cdw) [Entry date 03/21/02] [1:02cv299]

3/18/02 23 ORDER by Judge Colleen Kollar-Kotelly: granting motion for leave to file an amended petition for a writ of habeas corpus [22-1] by petitioners. The Petitioners first amended petition for a writ of habeas corpus is accepted for filing in place of the petition previously filed on 2/19/02. (N) (dot) [1:02cv299]

3/18/02 25 FIRST AMENDED PETITION filed by petitioners for writ of habeas corpus; attachments (cdw) [Entry date 03/21/02] [1:02cv299]

3/18/02 26 MOTION filed by respondents to dismiss first amended petition for writ of habeas corpus [25-1]; exhibits (1) (cdw) [Entry date 03/21/02] [1:02cv299]

3/18/02 29 RESPONSE by respondents in opposition to motion for order to provide the detained clients with notice of the pending litigation [27-1] by petitioners; motion for access to counsel [28-1] by petitioners (cdw) [Entry date 03/26/02] [1:02cv299]

4/1/02 30 MOTION (UNOPPOSED) filed by petitioner SHAFIQ RASUL to continue briefing schedule to 4/15/02 (bcs) [Entry date 04/02/02] [1:02cv299]

4/3/02 31 ORDER by Judge Colleen Kollar-Kotelly: granting motion to continue briefing schedule to 4/15/02 [30-1] by SHAFIQ RASUL; reply to motion due 4/15/02. (N) (dot) [1:02cv299]

4/15/02 32 MEMORANDUM by petitioner in opposition to motion to dismiss first amended petition for writ of habeas corpus [25-1] [26-1] by TERRY CARRICO, MICHAEL LEHNERT,

DONALD RUMSFELD, GEORGE WALKER BUSH; exhibit (1) (bcs) [Entry date 04/16/02] [1:02cv299]

4/17/02 34 MOTION filed by respondent to extend time to 4/29/02 to file a reply to petitioners memorandum in opposition to respondents motion to dismiss (bcs) [Entry date 04/22/02] [1:02cv299]

4/22/02 33 ORDER by Judge Colleen Kollar-Kotelly: granting respondent's unopposed motion to file reply to petitioner's memorandum in opposition to respondent's motion to dismiss. Respondents shall filed their reply to petitioners' memorandum in opposition to respondents's motion to dismiss not later than 4/29/02. (N) (dot) [1:02cv299]

4/29/02 35 REPLY by respondents to response in opposition to motion to dismiss first amended petition for writ of habeas corpus [25-1] [26-1] by TERRY CARRICO, MICHAEL LEHNERT, DONALD RUMSFELD, GEORGE WALKER BUSH (bcs) [Entry date 04/30/02] [1:02cv299]

6/14/02 36 ORDER by Judge Colleen Kollar-Kotelly: motion hearing set for 2:00 6/26/02 on respondents' motion to dismiss. The parties' arguments shall be solely focused upon the issue of whether the Court has jurisdiction to entertain petitioners habeas filing. Petitioners and respondents shall each be allotted one half-hour for oral argument. (N) (dot) [1:02cv299]

* * *

6/24/02 37 ORDER by Judge Colleen Kollar-Kotelly: that respondents will speak first and are allotted 20 minutes for prepared comments that addrss [sic] the merits of their motions to dismiss in this case and in the case of ODAH v. UNITED STATES, Civ. No. 02-828. Petitioners will speak second and are allotted fifteen minutes for prepared comments. Petitioners should consult plaintiffs' counsel in ODAH, who will speak third, to ensure that petitioners' comments are not duplicative of those made by plaintiffs' counsel in ODAH. Respondents will be given an appropriate opportunity to respond to the arguments made by petitioners in this matter and plaintiffs in ODAH. (N) (dot) [Entry date 06/25/02] [1:02cv299]

* * *

6/26/02 – STATUS HEARING before Judge Colleen Kollar-Kotelly: hearing held and taken under advisement Reporter: Edward Hawkins (dot) [Entry date 07/01/02] [1:02cv299]

* * *

7/30/02 41 ORDER by Judge Colleen Kollar-Kotelly: granting motion to consolidate cases for pretrial proceedings to case 02-299 [3-1] by FAWZI KHALID AL ODAH in 1:02-cv-00828. The Court consolidates ODAH v. UNITED STATES, Civil Action No. 02cv828, with RASUL v. BUSH, Civil Action No. 02cv299, for the limited purpose of addressing the Court's jurisdiction to hear these matters. (N) (dot) [Entry date 07/31/02] [1:02cv299 1:02cv828]

7/30/02 42 MEMORANDUM OPINION by Judge Colleen Kollar-Kotelly (N) (dot) [Entry date 07/31/02] [1:02cv299 1:02cv828]

7/30/02 43 ORDER by Judge Colleen Kollar-Kotelly: granting motion to dismiss first amended petition for writ of habeas corpus [25-1] [26-1] by TERRY CARRICO, MICHAEL LEHNERT, DONALD RUMSFELD, GEORGE WALKER BUSH in 1:02-cv-00299. Granting motion to dismiss plaintiffs' motion for preliminary injunction [9-1] and complaint [1-1]. [15-1] by federal defendants in 1:02-cv-00828. RASUL v BUSH, 02cv299, and ODAH v. UNITED STATES, 02cv828, are dismissed with prejudice. (N) (dot) [Entry date 07/31/02] (1:02cv299 1:02cv828]

7/30/02 – Post Arument brief filed by plaintiffs in 1:02-cv-00828, correcting erroneous statements by defense counsel at oral argument.; exhibits (3) (aet) [Entry date 08/02/02] [1:02cv828]

8/2/02 – NOTICE OF APPEAL by plaintiffs in 1:02-cv-00828 from order [30-1], entered on: 7/30/02. Copies sent. No fees paid. (COPY) (aet) [Entry date 08/08/02] [Edit date 08/08/02] [1:02cv828]

* * *

8/8/02 – TRANSCRIPT filed for date(s) of 6/26/02. Reporter: Edward Hawkins (aet) [Entry date 08/09/02] [1:02cv828]

* * *

9/9/02 44 NOTICE OF APPEAL by petitioners SHAFIQ RASUL in 1:02-cv-00299, SKINA BIBI, ASIF IQBAL, MOHAMMED IQBAL, DAVID HICKS, TERRY HICKS from order [43-1], order [41-1], entered on: 7/30/02. Fees paid. Copies sent. (aet) [Entry date 09/11/02] [1:02cv299]

9/12/02 – USCA # 02-5288 assigned for appeal [44-1] by petitionersssss [sic] (aet) [Entry date 09/16/02] [1:02cv299]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SHAFIQ RASUL,
Detainee, Camp X-Ray
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

SKINA BIBI,
as Next Friend of Shafiq Rasul
14 Inverness Street
London NW1 7HJ
United Kingdom

ASIF IQBAL,
Detainee, Camp X-Ray
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

MOHAMMED IQBAL,
as Next Friend of Asif Iqbal
14 Inverness Street
London NWl 7HJ
United Kingdom

DAVID HICKS,
Detainee, Camp X-Ray
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

TERRY HICKS,
as Next Friend of David Hicks
345 King William Street
Adelaide, SA 5000

Petitioners,

v.

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

No. CV: 02-0299 (CKK)

GEORGE WALKER BUSH,
President of the United States
The White House
1600 Pennsylvania Ave., N.W.
Washington, D.C. 20500

DONALD RUMSFELD,
Secretary, United States
Department of Defense
1000 Defense Pentagon
Washington, D.C. 20301-1000

BRIGADIER GEN. MICHAEL LEHNERT,
Commander, Joint Task Force-160
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

COLONEL TERRY CARRICO,
Commander, Camp X-Ray,
Guantanamo Bay Naval Base
Guantanamo Bay, Cuba

Respondents
All sued in their official and individual capacities

FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioners Shafiq Rasul, Asif Iqbal, and David Hicks seek the Great Writ. They act on their own behalf and through their Next Friends: Skina Bibi acts for her son Shafiq Rasul, Mohammed Iqbal acts for his son Asif, and Terry Hicks acts for his son David. David Hicks is a citizen of Australia. Mr. Iqbal and Mr. Rasul are citizens of the United Kingdom. They are being held virtually *incommunicado* in respondents' unlawful custody.

I.

JURISDICTION

2. Petitioners bring this action under 28 U.S. C. §§2241 and 2242, and invoke this Court's jurisdiction under 28 U.S.C. §§1331, 1350, 1651, 2201, and 2202; 5 U.S.C. §702; as well as the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, the International Covenant on Civil and Political Rights ("ICCPR"), the American Declaration on the Rights and Duties of Man ("ADRDM"), and Customary International Law. Because they seek declaratory relief, Petitioners also rely on F. R. Civ. P. 57.

3. This Court is empowered under 28 U.S.C. §2241 to grant the Writ of Habeas Corpus, and to entertain the Petition filed by Terry Hicks, Mohammed Iqbal, and Skina Bibi as Next Friend under 28 U.S.C. §2242. This Court is further empowered to declare the rights and other legal relations of the parties herein by 28 U.S.C. §2201, and to effectuate and enforce declaratory relief by all necessary and proper means by 28 U.S.C. §2202, as this case involves an actual controversy within the Court's jurisdiction.

II.

VENUE

4. Venue is proper in the United States District Court for the District of Columbia, since at least one respondent resides in the district, a substantial part of the events or omissions giving rise to the claim occurred in the district, at least one respondent may be found in the

district, and all respondents are either officers or employees of the United States or any agency thereof acting in their official capacities. 28 U.S.C. §§1391(b); 1391(e).

III.

PARTIES

5. Petitioner David Hicks is an Australian citizen presently incarcerated and held in respondents' unlawful custody at Camp X-Ray, United States Naval Base, Guantanamo Bay, Cuba. *See* Exhibit A, Birth Certificate of David Hicks.

6. Petitioner Terry Hicks is David Hicks' father. He too is an Australian citizen. Terry Hicks has received a letter from his son, delivered through the Australian Red Cross, asking for legal assistance. Because his son cannot secure access either to legal counsel or the courts of the United States, the elder Mr. Hicks acts as Next Friend. *See* Exhibit B, Affidavit of Terry Hicks, incorporated by reference herein.

7. Through counsel, Terry Hicks has tried repeatedly to contact his son, and to learn more about his condition and status. The United States has either rebuffed or ignored counsel's requests. In a letter dated January 17, 2002, for instance, Steven Kenny, Australian counsel for Terry and David Hicks, asked the Australian Government to confirm, *inter alia,* whether David Hicks was being held at Guantanamo, whether the United States intended to charge him with any offense, and whether the Australian Government could work with counsel to secure representation for Mr. Hicks. In the same letter, Mr. Kenny asked the Australian Government to "arrange contact between David

and his family." *See* Exhibit C, Affidavit of Stephen Kenny, Australian Counsel for Petitioners; Letter from Stephen Kenny to Hon. Daryl Williams, Attorney-General (Jan. 17, 2002), all correspondence incorporated herein by reference. The following day, the Australian Government advised counsel that Mr. Hicks was being held in Guantanamo, that he "does not currently have legal representation due to the nature and circumstances of his detention," and that "the matter of access to Mr. Hicks by his family" was "ultimately a matter for the United States." *Id.* at Letter from Robert Cornall, Attorney-General's Department (Jan. 18, 2002).

8. Mr. Kenny responded the same day, repeating his request for information about Mr. Hicks, and seeking the assistance of the Australian Government "with a view to arranging" legal advice for Mr. Hicks. On February 1, 2002,. Mr. Kenny renewed his request for "access by [Terry Hicks] to his son. He wishes to see his son face to face but would appreciate being able to make even a telephone call to him. Will you please make a direct request to the United States authorities for such a meeting." *Id.* at Letter from Stephen Kenny (Feb. 1, 2002). On February 8, 2002, the Australian Government left no doubt that David Hicks, and all detainees, were cut off:

> Your request for Mr. Hicks' family to have access to him was referred to the United States authorities. *The United States has advised that, at this stage, no family access will be allowed any of the detainees held at Guantanamo Bay.*

Id. at Letter from Robert Cornall (Feb. 8, 2002) (emphasis added).

9. In addition to his correspondence with the Australian Government, on January 25, Mr. Kenny wrote to President Bush, asking, *inter alia,* if he would "permit David to be seen by legal counsel," and if he would allow Terry Hicks "to have contact with his son." To date, the United States Government has not responded to this request.

10. Petitioner Asif Iqbal is a citizen of the United Kingdom presently incarcerated and held in respondents' unlawful custody at Camp X-Ray, Guantanamo Bay Naval Station, Guantanamo Bay, Cuba. *See* Exhibit D, Birth Certificate of Asif Iqbal.

11. Petitioner Mohammed Iqbal is Asif Iqbal's father. He too is a British citizen. Mohammed Iqbal received a telephone call from the Foreign and Commonwealth Office on January 21, 2002, during which he was informed that his son was being detained in Guantanamo Bay. Because his son cannot secure access either to legal counsel or the courts of the United States, Mohammed Iqbal acts as his Next Friend. *See* Exhibit E, Affidavit of Mohammed Iqbal, incorporated by reference herein.

12. Through counsel, Mohammed Iqbal has attempted to gain access to his son. The United States has declined to accede to counsel's requests. *See* Exhibit F, First Affidavit of Gareth Peirce, United Kingdom Counsel for Petitioners Asif and Mohammed Iqbal and Shafiq Rasul and Skina Bibi.

13. The British Foreign and Commonwealth Office advised Ms. Peirce that any request for access to Mr. Iqbal must be made to the United States Ambassador in London. Immediately upon receiving instructions from Mr Iqbal's family, on January 25, 2002, Ms. Peirce telephoned

and also sent a faxed request to the Ambassador, seeking immediate access to Mr. Iqbal in Guantanamo Bay in order to provide legal advice. In addition, she asked the Foreign and Commonwealth Office in London to pursue this request directly with the United States government. Ms. Peirce has been advised by the Foreign and Commonwealth Office that this request has been passed to the United States government on behalf of Mr Iqbal, together with requests by Mr Iqbal's Member of Parliament that he and Mr Iqbal's family be permitted access to him. Counsel is advised by the Foreign and Commonwealth Office that as of February 13, 2002, these requests have not received a response, and nor has a request for further consular access to Mr Iqbal, i.e. a second consular visit, been granted.

14. Petitioner Shafiq Rasul is a citizen of the United Kingdom presently incarcerated and held in respondents' unlawful custody at Camp X-Ray, Guantanamo Bay Naval Station, Guantanamo Bay, Cuba. *See* Exhibit G, Birth Certificate of Shafiq Rasul.

15. Petitioner Skina Bibi is Shafiq Rasul's mother. She too is a British citizen. Ms. Bibi received a telephone call from the Foreign and Commonwealth Office on January 21, 2002, during which she was informed that her son was being detained in Guantanamo Bay. Skina Bibi has also received news of a message from her son, delivered through the Red Cross, asking for legal representation. Because her son cannot secure access either to legal counsel or the courts of the United States, she acts as his Next Friend. *See* Exhibit H, Affidavit of Skina Bibi, incorporated by reference herein.

16. Through counsel, Skina Bibi has attempted to gain access to her son. The United States has declined to accede to counsel's requests. *See* Exhibit I, Second Affidavit of Gareth Peirce, United Kingdom Counsel for the Petitioners Asif and Mohammed Iqbal and Shafiq Rasul and Skina Bibi.

17. The British Foreign and Commonwealth Office advised Ms. Peirce that any request for access to Mr. Rasul must be made to the United States Ambassador in London. Immediately upon receiving instructions from Mr. Rasul's family, on January 25, 2002, Ms. Peirce telephoned and also sent a faxed request to the Ambassador, seeking immediate access to Mr. Rasul in Guantanamo Bay in order to provide legal advice. In addition, she asked the Foreign and Commonwealth Office in London to pursue this request directly with the United States government. Ms. Peirce has been advised by the Foreign and Commonwealth Office that this request has been passed to the United States government on behalf of Mr. Rasul, together with requests by Mr. Rasul's Member of Parliament that he and Mr. Rasul's family be permitted access to him. Counsel is advised by the Foreign and Commonwealth Office that as of February 13, 2002, these requests have not received a response, and nor has a request for further consular access to Mr Rasul, i.e. a second consular visit, been granted.

18. Respondent Bush is the President of the United States and Commander in Chief of the United States Military. He is the author of the Order directing that David Hicks, Asif Iqbai, and Shafiq Rasul be detained, and is ultimately responsible for their unlawful detention. He is sued in his official and personal capacities.

19. Respondent Rumsfeld is the Secretary of the United States Department of Defense. Pursuant to the Order described in Para. 18, respondent Rumsfeld has been charged with maintaining the custody and control of the detained petitioners. Respondent Rumsfeld is sued in his official and personal capacities.

20. Respondent Lehnert is the Commander of Joint Task Force-160, the task force running the detention operation at the Guantanamo Naval Station, Guantanamo Bay, Cuba. He has supervisory responsibility for the detained petitioners and is sued in his official and personal capacities.

21. Respondent Carrico is the Commandant of Camp X-Ray, where the detained petitioners are presently held. He is the immediate custodian responsible for their detention, and is sued in his official and personal capacities.

IV.

STATEMENT OF FACTS

22. The detained petitioners are not, nor have they ever been, enemy aliens or unlawful combatants. David Hicks is an Australian citizen in respondents' unlawful custody. At the time of his seizure by the United States Government, Mr. Hicks was living in Afghanistan.

23. Petitioner Asif Iqbal is a UK citizen in respondent's unlawful custody. In July, 2001, Iqbal's family arranged for him to marry a woman living in the same village in Pakistan as Iqbal's father. He left Britain after September 11, 2001, and traveled to Pakistan solely for the purpose of this arranged marriage. In early October,

2001, shortly before the arranged marriage, Petitioner Iqbal's father allowed him to leave the village briefly. On information and belief, after he left the village, Petitioner Iqbal was captured and kidnapped by groups working in opposition to the United States in Afghanistan and Pakistan.

24. Petitioner Shafiq Rasul is a UK citizen in respondents' unlawful custody. In the summer of 2001, Petitioner Rasul decided to take time off from his computer engineering degree to travel. His brother persuaded him to visit Pakistan. Petitioner Rasul traveled to Pakistan to visit relatives and explore his culture. He also hoped to continue his education, and wanted to find computer courses equivalent to, but more reasonably priced, than those he could take in Britain. He left Britain after September 11, 2001, and traveled to Pakistan solely for these purposes. Following his arrival in Pakistan, he stayed with an aunt in Lahore before beginning further travel in the country. On information and belief, after he left Lahore, Petitioner Rasul was captured and kidnapped by groups working in opposition to the United States in Afghanistan and Pakistan.

Petitioners' Seizure By The United States

25. In the wake of September 11, 2001, the United States, at the direction of respondent Bush, began a massive military campaign against the Taliban, then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized the President to use force against the "nations, organizations, or persons" that "planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such

organizations or persons." Joint Resolution 23, Authorization for Use of Military Force, Public Law 107-40, 115 Stat. 224 (Jan. 18, 2001). The Resolution did not authorize the indefinite detention of persons seized on the field of battle.

26. In the course of the military campaign, and as part of their effort to overthrow the Taliban, the United States provided military assistance to the Northern Alliance, a loosely knit coalition of Afghani and other military groups opposed to the Taliban Government. On information and belief, no American casualties were caused by the Taliban prior to when Mr. Hicks, Mr. Iqbal, and Mr. Rasul were apprehended, and the detained petitioners neither caused nor attempted to cause any harm to American personnel prior to their capture.

27. On or about December 9, 2001, the precise date unknown to counsel but known to respondents, the Northern Alliance captured David Hicks in Afghanistan. On or about December 17, 2001, the Northern Alliance transferred him to the custody of the United States military. *See* Exhibit J, Joint News Release of the Australian Attorney General and the Minister for Defense (December 17, 2001). David Hicks has been held in United States custody since that time.

28. No proper or adequate information has been provided by the United States government as to the date or circumstances of Mr. Iqbal's and Mr. Rasul's seizure by U.S. forces. The precise date of their capture by U.S. forces is unknown to counsel but known to respondents. On information and belief, they have been held in United States custody since early December, 2001.

29. The detained petitioners are not, and have never been, members of Al Qaida or any other terrorist group. Prior to their detention, they did not commit any violent act against any American person, nor espouse any violent act against any American person or property. On information and belief, they had no involvement, direct or indirect, in either the terrorist attacks on the United States September 11, 2001, or any act of international terrorism attributed by the United States to al Qaida or any terrorist group. They are not properly subject to the detention Order issued by respondent Bush, and discussed *infra* in Paras. 34-38.

30. On information and belief, the detained petitioners at no time voluntarily joined any terrorist force. On information and belief, if any of the detained petitioners ever took up arms in the Afghani struggle, it was only on the approach of the enemy, when they spontaneously took up aims to resist the invading forces, without having had time to form themselves into regular armed units, and carrying their arms openly and respecting all laws and customs of war.

31. On information and belief, the detained petitioners were not initially taken into custody by American forces. They were taken into custody against their will, and handed over to the Americans. There is no evidence they engaged in combat against American forces, On information and belief, if the detained petitioners were ever in Afghanistan prior to being taken involuntarily into custody, it was in order to facilitate humanitarian assistance to the Afghani people. The detained petitioners have taken no step that was not fully protected as their free exercise of their religious and personal beliefs.

32. On information and belief, the detained petitioners promptly identified themselves by correct name and nationality to the United States. They requested that the United States provide them with access to their families and to legal counsel. On information and belief, the detained petitioners were kept blindfolded, and sedated against their will for lengthy periods while they were taken involuntarily to Guantanamo Bay. On information and belief, in the course of being taken to Guantanamo Bay, the detained petitioners were transported via other American territory. On information and belief, the detained petitioners have been forced to provide involuntary statements to Respondents' agents in Guantanamo Bay.

33. On information and belief, the detained petitioners have been held under conditions that violate their international and constitutional rights to dignity and freedom from cruel, unusual and degrading punishment. They have not been provided with housing that even has proper walls. They have been forced to use a bucket for a toilet, and have not been provided with basic hygienic facilities. They have not been provided with meaningful access to their families. They have not been provided with the opportunity fully to exercise their religious beliefs. They have been exposed to the indignity and humiliation of the cameras of the national and international press, brought to Guantanamo Bay with the express consent and control of Respondents. Anyone who has seen them has been under instructions not to tell them even where they are being held.

The Detention Order

34. On November 13, 2001, respondent Bush issued a Military Order authorizing indefinite detention without due process of law. The Order authorizes respondent Rumsfeld to detain anyone respondent Bush has "reason to believe":

> i. is or was a member of the organization known as al Qaida;
>
> ii. has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or
>
> iii. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii)

See Exhibit K, Military Order of November 13, 2001. President Bush must make this determination in writing. The Order was neither authorized nor directed by Congress, and is beyond the scope of the Joint Resolution of September 18, 2001.

35. The Military Order vests the President with complete discretion to identify the individuals that fall within its scope. It establishes no standards governing the use of his discretion. Once a person has been detained, the Order contains no provision for him to be notified of the charges he may face. On the contrary, the Order authorizes detainees to be held without charges. It contains no provision for detainees to be notified of their rights under domestic and international law, and provides neither the

to counsel, nor the right to consular access. It provides no right to appear before a neutral tribunal to review the legality of a detainee's continued detention, and no provision for appeal to an Article III court. In fact, the Order expressly bars review by any court. Though the Order directs respondent Rumsfeld to create military tribunals, it sets no deadline for his task. And for those detainees who will not be tried before a tribunal, the Order authorizes indefinite and unreviewable detention, based on nothing more than the President's written determination that an individual is subject to its terms.

36. The Military Order was promulgated in the United States and in this judicial district, the decision to detain petitioners was made by respondents in the United States and in this judicial district, the decision to detain petitioners on Guantanamo Bay was made in the United States and in this judicial district, and the decision to continue detaining petitioners was, and is, being made by respondents in the United States and in this judicial district.

37. The United States Government has advised the Australian Government that Mr. Hicks is being held at Camp X-Ray, Guantanamo Bay Naval Station, Guantanamo Bay, Cuba, pursuant to this Order. *See* Exhibit L, Letter from Robert Cornall, Australian Attorney General's Department, to Stephen Kenny, Australian counsel for Petitioners (Jan. 18, 2002).

38. British Foreign Office Minister Ben Bradshaw advised Parliament on January 21, 2002, that British officials had visited three British citizens being detained at Camp X-Ray, Guantanamo Bay Naval Station, Guantanamo Bay, Cuba, who were held pursuant to this Order.

Only one of the detainees was named; the name given was neither Mr. Iqbal nor Mr. Rasul. However, Petitioners Mohammed Iqbal and Skina Bibi received telephone calls from the Foreign and Commonwealth Office January 21, 2002, during which they were informed that their sons were being detained at Camp X-Ray, in Guantanamo Bay.

39. On information and belief, respondent Bush has never certified or determined in any manner, in writing or otherwise, that the detained petitioners are subject to this detention order.

40. The detained petitioners are not properly subject to this detention order.

Guantanamo Bay Naval Station

41. On or about January 11, 2002, the United States military began transporting prisoners captured in Afghanistan to Camp X-Ray, at the United States Naval Base, in Guantanamo Bay, Cuba. Guantanamo Bay is a self-sufficient and essentially permanent city with approximately 7,000 military and civilian residents under the complete jurisdiction and control of the United States. Guantanamo Bay occupies nearly thirty-one square miles of land, an area larger than Manhattan, and nearly half the size of the District of Columbia. It has its own schools, generates its own power, provides its own internal transportation, and supplies its own water. Offenses committed by both civilians and foreign nationals living on Guantanamo are brought before federal courts on the mainland, where defendants enjoy the full panoply of Constitutional rights.

42. The United States has occupied Guantanamo Bay since 1903, and has repeatedly declared its intention to remain there indefinitely. For several decades, the United States has resisted claims of national sovereignty made by Cuba over Guantanamo Bay, insisting that its occupation of the land is legal and will remain so in perpetuity, so long as the United States chooses to exercise dominion and control over the land. The area is now, and has been for many years, under exclusive United States jurisdiction.

43. Guantanamo Bay has developed into a fully American enclave with all the residential, commercial, and recreational trappings of a small American city. The infrastructure is permanent and complex, providing for a wholly self-sufficient American community. The "Gitmo Guide", available online, lists fifteen restaurants, a bowling alley, and a Baskin Robbins. *See* The Gitmo Guide, at http://www.geocities.com/Pentagon/6625/dining.html. Guantanamo Bay contains an outdoor movie theater, a McDonald's and a mini-mall. http://www.cubanet.org/CNews/y02/jan02/15e5.htm. Residents, as well as their children, enjoy a number of recreational activities and clubs, including the Boys Scouts, Cub Scouts, USA Girl Scouts, the Guantanamo Bay Little Theater Company, an Archery Club, a golf club and even a Star Trek club. Residents may participate in a number of different sports including golf, hunting, tennis, horseback riding, football, softball and soccer.

44. A small children's zoo has been established on the naval base which contains "goats, donkeys, iguanas and banana rats. To facilitate water recreation for the residents, the bay side beaches have been dredged and pooled to protect bathers from the undertow and swift

tidal current in the bay. "Gitmo boasts its own yatch club, which conducts races nearly every week . . . [requiring] all boats . . . to fly the United States flag."[1] The United States has established 'America's Slice of Cuba,"[2] where the residents "live in American-style homes, shop for American products and drive American cars. They have cable TV and radio stations, and their children attend schools that could be found in any suburban neighborhood."[3]

45. In light of the foregoing, the United States Navy has accurately described Guantanamo Bay as "a Naval reservation *which, for all practical purposes, is American territory.* Under the [lease] agreements, *the United States has for approximately [ninety] years exercised the essential elements of sovereignty over this territory,* without actually owning it. Unless we abandon the area or agree to a modification of the terms of our occupancy, we can continue in the present status as long as we like, [According to the United States p]ersons on the reservation are amenable only to United States legislative enactments." *See* The History of Guantanamo Bay: An Online Edition (1964), available at http://www.nsgtmo.navy.mil/history.htm.

46. On or about January 11, 2002, the precise date unknown to counsel but known to respondents, the United

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[1] Theodore K Mason, "Across the Cactus Curtain" at 106 (1984) (Library of Congress Cataloging in Publication Data).

[2] *See* Tom Gibbs, "World Americas, America's Slice of Cuba" (BBC Online Network, Friday January 1, 1999).

[3] http://www.sun-sentinel.com/news/local/cuba/sns-gitmo-galleryindex.photogallery?coll=sfla-news-cuba-(inside Guantanamo Bay Naval Station).

States military transferred the detained petitioners to Camp X-Ray, Guantanamo Bay, where they have been held ever since, in the custody of respondents Bush, Rumsfeld, Lehnert, and Carrico.

47. Since gaining control of the detained petitioners, the United States military has held them virtually *incommunicado.* They have been or will be interrogated repeatedly by agents of the United States Departments of Defense and Justice, though they have not been charged with an offense, nor have they been notified of any pending or contemplated charges. They have made no appearance before either a military or civilian tribunal of any sort, nor have they been provided counsel or the means to contact counsel. They have not been informed of their rights under the United States Constitution, the regulations of the United States Military, the Geneva Convention, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, or Customary International Law. Indeed, the respondents have taken the position that the detainees should not be told of these rights. As a result, the detained petitioners are completely unable either to protect, or to vindicate their rights under domestic and international law.

48. David Hicks has been allowed to write a single, brief letter to his father, which was delivered by the Australian Red Cross. In that letter, he asked his father for legal assistance. *See* Exhibit B, Affidavit of Terry Hicks.

49. Shafiq Rasul has attempted to pass messages to his family, through the Red Cross. The U.S. authorities did not permit the details of these messages to be delivered. A

summary was provided, however, indicating that Mr. Rasul was well and that he had asked for legal representation. *See* Exhibit H, Affidavit of Skina Bibi. Asif Iqbal communicated with his family, through the Red Cross, when he was detained in Afghanistan. It is unknown whether he has attempted to communicate with his family since his detention in Guantanamo.

50. In published statements, respondents Bush, Rumsfeld, Lehnert and Carrico have indicated the United States may hold the detained petitioners under these conditions indefinitely. *See, e.g.,* Roland Watson, *The Times (London),* Jan. 18, 2002 ("Donald Rumsfeld, the U.S. Defence Secretary, suggested last night that al-Qaeda prisoners could be held indefinitely at the base. He said that the detention of some would be open-ended as the United States tried to build a case against them."); Lynne Sladky, Associated Press, Jan. 22, 2002 ("Marine Brig. Gen. Mike Lehnert, who is in charge of the detention mission, defended the temporary cells where detainees are being held . . . 'We have to look at Camp X-ray as a work in progress. . . ,' Lehnert told CNN. . . . Lehnert said plans are to build a more permanent prison 'exactly in accordance with federal prison standards' "); John Mintz, THE WASHINGTON POST, "Extended Detention In Cuba Mulled," Feb. 13, 2002 ("As the Bush administration nears completion of new rules for conducting military trials of foreign detainees, U.S. officials say they envision the naval

base at Gantanamo Bay, Cuba, as a site for the tribunals and as a terrorist penal colony for many years to come.")[4]

V.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF (DUE PROCESS – FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION)

51. Petitioners incorporate paragraphs 1-50 by reference.

52. By the actions described above, respondents, acting under color of law, have violated and continue to violate the Fifth and Fourteenth Amendments to the United States Constitution. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of individuals, without Due Process of Law. Respondents Rumsfeld, Lehnert, and Carrico are likewise acting in violation of the Fifth Amendment, since they act at the President's direction. On its face, the Executive Order violates the Fifth and Fourteenth Amendments.

[4] *See also* Time Magazine, "Welcome to Camp X-Ray" (February 3, 2002):

> "More curious still is the matter of the prisoners' ultimate fate. Rumsfeld has laid out four options: a military trial, a trial in U.S. criminal courts, return to their home countries for prosecution, or continued detention 'while additional intelligence is gathered.' The last seems a distinct possibility; the Pentagon plans to build 2,000 cells at Camp X-Ray."

SECOND CLAIM FOR RELIEF (DUE PROCESS – FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION)

53. Petitioners incorporate paragraphs 1-52 by reference.

54. By the actions described above, respondents, acting under color of law, have violated and continue to violate the right of the detained petitioners to be free from arbitrary, prolonged, and indefinite detention, in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution. The Executive Order, as applied to Mr. Hicks, Mr. Iqbal, and Mr. Rasul, violates the Fifth and Fourteenth Amendments.

THIRD CLAIM FOR RELIEF (DUE PROCESS – INTERNATIONAL LAW)

55. Petitioners incorporate paragraphs 1-54 by reference.

56. By the actions described above, respondents, acting under color of law, have violated and continue to violate Customary International Law, Arts. 9 & 14 of the International Covenant on Civil and Political Rights, and Arts. 18, 25, & 26 of the American Declaration on the Rights and Duties of Man. Respondent Bush has ordered the prolonged, indefinite, and arbitrary detention of individuals, without legal process, in violation of binding obligations of the United States under International Law. Respondents Rumsfeld, Lehnert, and Carrico are likewise acting in violation of International Law, since they act at the President's direction. On its face, the Executive Order violates International Law.

FOURTH CLAIM FOR RELIEF (DUE PROCESS – INTERNATIONAL LAW)

57. Petitioners incorporate paragraphs 1-56 by reference.

58. By the actions described above, respondents, acting under color of law, have violated and continue to violate the right of the detained petitioners to be free from arbitrary, prolonged, and indefinite detention, in violation of Customary International Law, Arts. 9 & 14 of the International Covenant on Civil and Political Rights, and Arts. 18, 25, & 26 of the American Declaration on the Rights and Duties of Man. The Executive Order, as applied to the detained petitioners, violates these and other binding obligations of the United States under International Law.

FIFTH CLAIM FOR RELIEF
(DUE PROCESS – FAILURE TO COMPLY WITH U. S. MILITARY REGULATIONS AND INTERNATIONAL HUMANITARIAN LAW)

59. Petitioners incorporate paragraphs 1-58 by reference.

60. By the actions described above, respondents, acting under color of law, have violated and continue to violate the rights accorded to persons seized by the United States Military in times of armed conflict, as established by, *inter alia,* the regulations of the United States Military, Articles 4 and 5 of Geneva Convention III, Geneva Convention IV, and Customary International Law.

SIXTH CLAIM FOR RELIEF
(WAR POWERS CLAUSE)

61 Petitioners incorporate paragraphs 1-60 by reference.

62. By the actions described above, respondents, acting under color of law, have exceeded the constitutional authority of the Executive and have violated and continue to violate the War Powers Clause by ordering the prolonged and indefinite detention of the detained petitioners without Congressional authorization.

SEVENTH CLAIM FOR RELIEF
(SUSPENSION OF THE WRIT)

63. Petitioners incorporate paragraphs 1-62 by reference.

64. To the extent the order of November 13, 2001, disallows any challenge to the legality of the detained petitioners' detention by way of habeas corpus, the Order and its enforcement constitute an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution.

VI.

PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

1. Grant Petitioner Terry Hicks Next Friend status, as Next Friend of David Hicks;

2. Grant Petitioner Mohammed Iqbal Next Friend status, as Next Friend of Asif Iqbal;

3. Grant Petitioner Skina Bibi Next Friend status, as Next Friend of Shafiq Rasul;

4. Order the detained petitioners released from respondents' unlawful custody;

5. Order respondents to allow counsel to meet and confer with the detained petitioners, in private and unmonitored attorney-client conversations;

6. Order respondents to cease all interrogations of the detained petitioners, direct or indirect, while this litigation is pending;

7. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of the Fifth and Fourteenth Amendments to the United States Constitution;

8. Order and declare that the detained petitioners are being held in violation of the Fifth and Fourteenth Amendments to the United States Constitution;

9. Order and declare the Executive Order of November 13, 2001, unlawful as a violation of Customary International Law, the International Covenant on Civil and Political Rights, and the American Declaration on the Rights and Duties of Man;

10. Order and declare that the detained petitioners are being held in violation of Customary International Law, the International Covenant on Civil and Political Rights, and the American Declaration on the Rights and Duties of Man;

11. Order and declare that the detained petitioners are being held in violation of the regulations of the United States Military, the Geneva Convention, and International Humanitarian Law;

12. Order and declare that the Executive Order of November 13, 2001, violates the War Powers Clause;

13. Order and declare that the provision of the Executive Order that bars the detained petitioners from seeking relief in this Court is an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution;

14. To the extent respondents contest any material factual allegations in this Petition, schedule an evidentiary hearing, at which Petitioners may adduce proof in support of their allegations;

15. Such other relief as the Court may deem necessary and appropriate to protect Petitioners' rights under the United States Constitution and International Law.

Dated: 3-12-02

Respectfully submitted,

Counsel for Petitioners:

/s/ L. Barrett Boss (for)
Joseph Margulies*
Minnesota Bar No. 208528
MARGULIES & RICHMAN, plc
2520 Park Avenue, South
Minneapolis, MN 55404
612-872-4900
612-872-4967 (FAX)

/s/ L. Barrett Boss (for)
Clive A. Stafford Smith**
Louisiana Bar No. 14444
P.O. Box 50753
New Orleans, LA
70150-0753
(504) 558-0440

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* Mr. Margulies, Mr. Kenny, and the Center for Constitutional Rights appear for Petitioners Terry and David Hicks.

** Mr. Stafford Smith and Ms. Peirce appear for Petitioners Asif and Mohammed Iqbal, as well as Petitioners Rasul and Bibi.

Mr. Norris and Mr. Boss appear as local counsel for all attorneys.

/s/ L. Barrett Boss (for)
Michael Ratner*
William Goodman
Anthony DiCaprio
Center for Constitutional Rights
666 Broadway
New York, N.Y. 10012
(212) 614-6464
(212) 614-6499 (FAX)

/s/ L. Barrett Boss (for)
Gareth Peirce**
Birnberg, Peirce and Partners, Solicitors
14 Inverness Street
London NW1 7HJ
United Kingdom
0207-911-0166
0207-911-0170 (FAX)

/s/ L. Barrett Boss (for)
Stephen Kenny*
CAMATTA LEMPENS, PTY LTD.
BARRISTERS AND SOLICITORS
345 King William Street
Adelaide, SA 5000
(011) 618-8410-0211
(011) 618-8410-0566 (FAX)

/s/ L. Barrett Boss (for)
Jon W. Norris
D.C. Bar No. 426105
The Law Office of Jon W. Norris
641 Indiana Avenue, N.W.
Washington, D.C. 20002
(202) 546-1500
(202) 842-2622 (FAX)

/s/ L. Barrett Boss
L. Barrett Boss
Bar No. 398100
ASBILL MOFFITT & BOSS, Chtd.
1615 New Hampshire Avenue, NW
Suite 200
Washington, DC 20009
(202) 234 9000 (x119)
(202) 332 6480 (FAX)

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on this 12th day of March, 2002.

/s/ L. Barrett Boss
L. Barrett Boss

General Docket
US Court of Appeals for the DC Circuit

HABIB, et al v. BUSH, et al

9/11/02 CIVIL-US CASE docketed. Notice of Appeal filed by Appellant Mamdouh Habib, and by Appellant Maha Habib. [701053-1] (jth) [02-5284]

* * *

9/12/02 MOTION filed (5 copies) by Appellants Mamdouh Habib, and Maha Habib (certificate of fax/mail service dated 9/12/02) to expedite [701779-1]. (jth) [02-5284]

9/12/02 MOTION filed (5 copies) by Appellants Mamdouh Habib, et al. in 02-5284, and Appellants Shafiq Rasul in 02-5288, et al., in 02-5288 (certificate of fax/mail service dated 9/12/02) to consolidate these cases [701789-1]. [02-5284, 02-5288] (jth) [02-5284, 02-5288]

9/13/02 PER CURIAM ORDER filed [701827-1] granting the motion to consolidate No. 02-5284 with No. 02-5288 [701789-1]. It is FURTHER ORDERRED [sic] that the motions to expedite [701779-1], [701783-1] be granted. FURTHER ORDERED, on the court's own motion, that consolidated Nos. 02-5284 and 02-5288 be consolidated with No. 02-5251 [701827-1]. FURTHER ORDERED that the following briefing format and schedule apply in all three consolidated cases [701827-3]: Joint Brief for Appellants Habib and Rasul (not to exceed 14,000 words) due on 9/24/02; Brief for Appellant Odah (not to exceed 14,000 words) due on 9/24/02; Joint Appendix due on 9/24/02; Appellees' Brief (not to exceed 14,000 words) due on 10/18/02; Joint Reply Brief for Appellants

Habib and Rasul (not to exceed 7,000 words) due on 10/29/02, Reply Brief for Appellant Odah (not to exceed 7,000 words) due on 10/29/02. Absent extraordinarily compelling circumstances, the court will not grant any modification of these provisions. The parties are directed to file and serve their briefs by hand. The oral argument date and composition of the mertis [sic] panel will be established by separate order. Before Judges: Edwards, Rogers and Tatel. [E

U.S. District Court

USDC District of Columbia (Washington)

CIVIL DOCKET FOR CASE #: 02-CV-1130

HABIB, et al v. BUSH, et al

DATE	#	DOCKET ENTRY
6/10/02	1	PETITION filed by petitioners MAMDOUH HABIB, and MAHA HABIB for writ of habeas corpus; attachments (4) (bm) [Entry date 06/13/02]
		* * *
6/10/02	2	NOTIFICATION OF RELATED CASE: Case related to Case No(s): CA 02-828 and CA 02-299 (bm) [Entry date 06/13/02]
7/30/02	3	ORDER by Judge Colleen Kollar-Kotelly: that Petitioners shall have unitl 8/7/02 to show cause why the Petition of Writ of Habeas Corpus should not be dismissed with prejudice. If the Court does not receive a response from Petitioners by 8/7/02, it will dismiss the Petition for Writ of Habeas Corpus with prejudice. (N) (dot) [Entry date 7/31/02]
8/6/02	4	RESPONSE by petitioner MAMDOUH HABIB, petitioner MAHA HABIB to order shall have unitl [sic] 8/7/02 to show cause why the Petition for Writ of Habeas Corpus should not be dismissed with prejudice. [3-1] (aet) [Entry date 08/08/02]
8/8/02	5	MEMORANDUM OPINION by Judge Colleen Kollar-Kotelly dismissing this case. (N) (jwd)

8/8/02	6	ORDER by Judge Colleen Kollar-Kotelly: dismissing petition for Writ of Habeas Corpus with prejudice for the reasons set forth in the Court's July 30, 2002, Memorandum Opinion filed in Rasul v. Bush, C.A. 02-0299, and Odah v. United States, C.A. 02-828. (N) (N) (jwd)
9/9/02	7	NOTICE OF APPEAL by petitioner MAMDOUH HABIB, petitioner MAHA HABIB from order [6-1], entered on: 8/8/02. Filing fee of $100, docketing fee of $5 paid. Copies sent. (aet) [Entry date 09/10/02]
		* * *
9/11/02	–	USCA # 02-5284 assigned for appeal [7-1] by MAHA HABIB, MAMDOUH HABIB (aet) [Entry date 09/12/02]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Mamdouh Habib, Detainee, Camp Delta Guantanamo Bay Naval Base Guantanamo Bay, Cuba	)	
Maha Habib, as Next Friend of Mamdouh Habib	)	PETITION
Petitioners,	)	FOR WRIT
v.	)	OF HABEAS
GEORGE WALKER BUSH, President of the United States The White House 1600 Pennsylvania Ave., N.W. Washington, D.C. 20500	)	CORPUS AND REQUEST FOR ADEQUATE PROCESS No.
DONALD RUMSFELD, Secretary, United States Department of Defense 1000 Defense Pentagon Washington, D.C. 20301-1000	)	
BRIGADIER GENERAL RICK BACCUS, Commanding General, Joint Task Force-160 Guantanamo Bay Naval Base Guantanamo Bay, Cuba	)	
LIEUTENANT COLONEL WILLIAM CLINE, Commander, Camp Delta, Guantanamo Bay Naval Base Guantanamo Bay, Cuba	)	
Respondents All sued in their official and individual capacities.	)	

PETITION FOR WRIT OF HABEAS CORPUS

1. Petitioner Mamdouh Habib seeks the Great Writ. He acts on his own behalf and through his Next Friend, his wife, Maha Habib. Mr. Habib is a citizen of Australia. In this action, he seeks a process by which this Court can determine whether his detention is lawful, and a declaration that without such process, he is being held unlawfully.

I
JURISDICTION

2. Petitioners bring this action under 28 U.S.C. §§2241 and 2242, 28 U.S.C. §§1331, 1350, 1651, 2201, and 2202; 5 U.S.C. §702; as well as the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution, the International Covenant on Civil and Political Rights ("ICCPR"), the American Declaration on the Rights and Duties of Man ("ADRDM"), and Customary International Law. These statutes, constitutional provisions, and international legal obligations of the United States vest this Court with jurisdiction to hear the action. In addition, because they seek declaratory relief, Petitioners also rely on F. R. Civ. P. 57.

3. This Court is empowered under 28 U.S.C. §2241 to grant the Writ of Habeas Corpus, and to entertain the Petition filed by Maha Habib as Next Friend under 28 U.S.C. §2242. The Court is also empowered under 28 U.S.C. §1350, the Alien Tort Claims Act, to hear the action, as Petitioner is a foreign national arbitrarily detained in violation of customary international law. This Court is further empowered to declare the rights and other legal relations of the parties herein by 28 U.S.C. §2201, and to effectuate and enforce declaratory relief by all necessary and proper means by 28

U.S.C. §2202, as this case involves an actual controversy within the Court's jurisdiction.

II
VENUE

4 [sic]. Venue is proper in the United States District Court for the District of Columbia, since at least one respondent resides in the district, a substantial part of the events or omissions giving rise to the claim occurred in the district, at least one respondent may be found in the district, and all respondents are either officers or employees of the United States or any agency thereof acting in their official capacities. 28 U.S.C. §§1391(b); 1391(e).

III
PARTIES

4 [sic]. Petitioner Mamdouh Habib is an Australian citizen presently incarcerated and held in respondents' unlawful custody at Camp Delta, United States Naval Base, Guantanamo Bay, Cuba. *See* Exhibit A, Affidavit of Maha Habib, attachment "MH2".

5. Petitioner Maha Habib is Mamdouh Habib's wife. She too is an Australian citizen. Maha Habib has received correspondence from her husband; delivered through the Australian Red Cross, asking her for legal assistance. Because her husband cannot secure access either to legal counsel or the courts of the United States, Maha Habib acts as Next Friend. *See Id,* attachment "MH8".

6. Through counsel, Maha Habib has tried repeatedly to contact her husband, to learn more about his condition and status and to gain access to him. The United

States has either rebuffed or ignored counsel's requests.

7. On the 26 April 2002, counsel wrote to the United States Ambassador to Australia to ask, among other things, that he be afforded access to his client and that the Embassy facilitate correspondence between his client and his family. In this letter, counsel also asked the United States to confirm the legal basis for his client's detention and whether he had been charged with any offence. *See* Exhibit B, Affidavit of Stephen Hopper, Australian Counsel for petitioners, attachment "SH7".

8. On the 17 May, 2002, counsel sent a letter in similar terms to respondent Bush. *See Id.* attachment "SH10".

9. To date, no reply has been received from either the United States Ambassador or from respondent Bush.

10. In the week commencing 13 May 2002, officials from the Australian government visited Mr. Habib at Camp Delta. Upon their return, the Australian government issued a press release in which they confirmed that Mr. Habib was detained at Guantanamo Bay. *See Id.* attachment "SH12". During their visit the Australian government did not determine the legal authority for Mr. Habib's detention. Nor did they arrange for his counsel to have access to him. They did, however, deliver to Mrs. Habib a letter written by her husband in which he denied any wrongdoing or involvement in terrorist activity. In this letter, he made clear his wish for his wife to secure legal representation for him. *See Id.,* attachment "MH9".

11. Respondent Bush is the President of the United States and Commander in Chief of the United States Military. It is pursuant to the Military Order promulgated by him or alternatively, under his authority as

Commander in Chief and under the laws and usages of war that Mr. Habib is being detained. He is sued in his official and personal capacities.

12. Respondent Rumsfeld is the Secretary of the United States Department of Defense. Either pursuant to the Military Order or the President's authority as Commander in Chief and under the laws and usages of war, respondent Rumsfeld has been charged with maintaining the custody and control of the detained petitioner. Respondent Rumsfeld is sued in his official and personal capacities.

13. Respondent Baccus is the Commanding General of Joint Task Force-160, the task force running the detention operation at the Guantanamo Naval Station, Guantanamo Bay, Cuba. He has supervisory responsibility for the detained petitioner and is sued in his official and personal capacities.

14. Respondent Cline is the Commander of Camp Delta, where the detained petitioner is presently held. He is the immediate custodian responsible for his detention, and is sued in his official and personal capacities.

IV
STATEMENT OF FACTS

15. The detained petitioner is not, and has never been an enemy alien, combatant or unlawful combatant. Mamdouh Habib is an Australian citizen and civilian in respondents' unlawful custody.

16. In August 2001, Mr. Habib traveled to Pakistan from Australia to look for employment and for a school for his two teenage children. On information and belief, on 5 October, 2002, shortly before he was due to return to his family in Australia, Mr. Habib was

arrested and detained by Pakistani authorities in Pakistan. He was initially held by Pakistani authorities at a detention facility in the city of Quetta before being transferred to another such facility in Islamabad. While in Pakistan, he was detained virtually incommunicado for approximately 11 days. *See* Exhibit B at pp. 3-4.

17. On an unknown date in October, and for reasons unknown, Mr. Habib was transported from Pakistan to Egypt where he was detained by Egyptian authorities. *See.* Exhibit A, attachment "MH5".

18. On 18 April, 2002, the Australian government notified Mrs. Habib that her husband had been handed over by the Egyptian authorities to the custody and control of the United States' military and from Egypt transported by them to Afghanistan. *See* Exhibit A, attachment "MH6". This was the first occasion on which the Mr. Habib had been to Afghanistan.

19. On 6 May 2002, the Australian government issued a press release stating that the United States had transferred Mr. Habib to its detention facility at Guantanamo Bay, Cuba, on 4 May, 2002. *See* Exhibit B, attachment "SH9".

Petitioner's Seizure By The United States

20. In the wake of September 11 2001, the United States, at the direction of respondent Bush, began a massive military campaign against the Taliban regime then in power in Afghanistan. On September 18, 2001, a Joint Resolution of Congress authorized the President to use force against the "nations, organizations, or persons" that "planned, authorized, committed, or aided the terrorist attacks on September 11, 2001, or [that] harbored such organizations or persons." Joint Resolution 23, Authorization for Use of Military Force,

Public Law 107-40, 115 Stat. 224 (Jan. 18, 2001). The Resolution did not authorize the indefinite detention of persons seized on the field of battle, nor does it authorize the indefinite detention of innocent men.

21. On 7 October 2001, the United States launched an aerial bombing campaign which targeted specific Al Qaida and Taliban government military installations within the territory of Afghanistan. This date marked the first day of armed conflict between the United States and its coalition partners and the Taliban government and Al Qaida armed forces. Mr. Habib's initial apprehension by Pakistani authorities in Pakistan on 5 October 2001 took place before the commencement of the armed conflict and well before any American personnel were engaged in fighting. Prior to, at the time of, and throughout his subsequent detention, Mr. Habib was neither a member of the Taliban government nor Al Qaida armed forces, nor had he caused or attempted to cause any harm to American personnel or property prior to his detention.

22. On an unknown date in October 2001, Mr. Habib was flown to Egypt where he was detained by Egyptian authorities. On a date unknown to counsel but known to respondents, the Egyptian authorities released Mr. Habib into the custody of the United States' military. *See* Exhibit A, attachment "MH6". Mr. Habib has been held in United States custody since that time.

23. The detained petitioner is not, and has never been, a member of Al Qaida or any other terrorist group. Prior to his detention, he did not commit any violent act against any American person, nor espouse any violent act against any American person or property, nor was he involved in the ensuing armed conflict. Mr. Habib was at all relevant times a non-combatant civilian. On information and belief, he had no involvement, direct or indirect, in either the terrorist

attacks on the United States September 11 2001, or any act of international terrorism attributed by the United States to Al Qaida or any terrorist group. He is not properly subject to the detention Order issued by respondent Bush. As he did not participate in the armed conflict at any point in time, nor is he properly subject to respondent Bush's authority as Commander in Chief and under the laws and usages of war.

24. On information and belief, the detained petitioner has had no military or terrorist training. On information and belief, he at no time joined any terrorist force.

25. On information and belief, the detained petitioner was not initially taken into custody by American forces. He was taken into custody against his will by Pakistani and Egyptian authorities and handed over to the Americans. He has not engaged in combat against American forces.

26. On information and belief, the detained petitioner promptly identified himself by correct name and nationality to the United States. He requested that the United States provide him with access to his family and to legal counsel. On information and belief, the detained petitioner was kept blindfolded against his will for lengthy periods while being taken involuntarily to Guantanamo Bay. On information and belief, in the course of being taken to Guantanamo Bay, the detained petitioner was transported via other American territory. On information and belief, the detained petitioner has been forced to provide involuntary statements to respondents' agents in Guantanamo Bay.

27. On information and belief, the detained petitioner has been held under conditions that violate his international and constitutional rights to dignity and freedom from cruel, unusual and degrading punishment. He has been housed throughout his detention in

accommodation that fails to satisfy both domestic and internationally accepted standards of accommodation for any person subject to detention. He has been refused meaningful access to his family. He has not been provided with the opportunity fully to exercise his religious beliefs.

The Detention Order

28. On November 13, 2001, respondent Bush issued a Military Order authorizing indefinite detention without due process of law. The Order authorizes respondent Rumsfeld to detain anyone respondent Bush has "reason to believe":

    i. is or was a member of the organization known as al Qaida;

    ii. has engaged in, aided or abetted, or conspired to commit, acts of international terrorism, or acts in preparation therefor, that have caused, threaten to cause, or have as their aim to cause, injury to or adverse effects on the United States, its citizens, national security, foreign policy, or economy; or

    iii. has knowingly harbored one or more individuals described in subparagraphs (i) and (ii)

    See Exhibit C, Military Order of November 13, 2001. President Bush must make this determination in writing. The Order was neither authorized nor directed by Congress, and is beyond the scope of the Joint Resolution of September 18, 2001.

29. The Military Order vests the President with complete discretion to identify the individuals that fall within its scope. It establishes no standards governing the

use of his discretion. Once a person has been detained, the Order contains no provision for him to be notified of the charges he may face. On the contrary, the Order authorizes detainees to be held without charges. It contains no provision for detainees to be notified of their rights under domestic and international law, and provides neither the right to counsel, nor the right to consular access. It provides no right to appear before a neutral tribunal to review the legality of a detainee's continued detention and no provision for appeal to an Article III court. In fact, the Order expressly bars review by any court. For those detainees who will not be tried before a tribunal, the Order authorizes indefinite and unreviewable detention, based on nothing more than the President's written determination that an individual is subject to its terms.

30. The Military Order was promulgated in the United States and in this judicial district, the decision to detain Mr. Habib was made by respondents in the United States and in this judicial district, the decision to detain the Mr. Habib at Guantanamo Bay was made in the United States and in this judicial district, and the decision to continue detaining the petitioner was, and is, being made by respondents in the United States and in this judicial district.

31. On information and belief, respondent Bush has never certified or determined in any manner in writing or otherwise, that the detained petitioner is subject to this detention order.

32. The detained petitioner is not properly subject to this detention order.

33. In the related case of *Rasul v. Bush*, No. 02-CV-0299 (CKK), filed Feb. 19, 2002, respondents contend that the petitioners in that case are being detained not

pursuant to the President's Military Order but rather under the President's authority as Commander in Chief and under the laws and usages of war. *See* Exhibit D, Respondent's Motion to Dismiss Petitioners' First Amended Petition for Writ of Habeas Corpus, pp. 8-9.

34. Mr. Habib was not arrested or detained by the United States in the course of the armed conflict. He was detained by Pakistani, not United States authorities on 5 October, 2001, before hostilities began.

35. Mr. Habib was arrested by Pakistani authorities not in Afghanistan, but Pakistan, nowhere near the battlefield.

36. Mr. Habib was handed over to United States' custody by Egyptian authorities in Egypt.

37. The detained petitioner is not properly detained under the President's authority as Commander in Chief and under the laws and usages of war.

Guantanamo Bay Naval Station

38. On or about January 11, 2002, the United States military began transporting prisoners captured in Afghanistan to Camp Delta, at the United States Naval Base, in Guantanamo Bay, Cuba. Guantanamo Bay is a self-sufficient and essentially permanent city with approximately 7,000 military and civilian residents under the complete jurisdiction and control of the United States. Guantanamo Bay occupies nearly thirty-one square miles of land, an area larger than Manhattan, and nearly half the size of the District of Columbia. It has its own schools, generates its own power, provides its own internal transportation, and supplies its own water. Offenses committed by both civilians and foreign nationals living on Guantanamo

are brought before federal courts on the mainland, where defendants enjoy the full panoply of Constitutional rights.

39. The United States has occupied Guantanamo Bay since 1903, and has repeatedly declared its intention to remain there indefinitely. For several decades, the United States has resisted claims of national sovereignty made by Cuba over Guantanamo Bay, insisting that its occupation of the land is legal and will remain so in perpetuity, so long as the United States chooses to exercise dominion and control over the land. The area is now, and has been for many years, under exclusive United States jurisdiction.

40. Guantanamo Bay has developed into a fully American enclave with all the residential, commercial, and recreational trappings of a small American city. The infrastructure is permanent and complex, providing for a wholly self-sufficient American community. The "Gitmo Guide", available online, lists fifteen restaurants, a bowling alley, and a Baskin Robbins. *See* The Gitmo Guide, at http://www.geocities.com/Pentagon/6625/dining.html. Guantanamo Bay contains an outdoor movie theater, a McDonald's and a mini-mall. http://www.cubanet.org/CNews/y02/jan02/15e5.htm. Residents, as well as their children, enjoy a number of recreational activities and clubs, including the Boys Scouts, Cub Scouts, USA Girl Scouts, the Guantanamo Bay Little Theater Company, an Archery Club, a golf club and even a Star Trek club. Residents may participate in a number of different sports including golf, hunting, tennis, horseback riding, football, softball and soccer.

41. A small children's, zoo has been established on the naval base which contains "goats, donkeys, iguanas and banana rats. To facilitate water recreation for the residents, the bay side beaches have been dredged

and pooled to protect bathers from the undertow and swift tidal current in the bay. "Gitmo boasts its own yacht club, which conducts races nearly every week . . . [requiring] all boats . . . to fly the United States flag"[1] The United States has established 'America's Slice of Cuba,"[2] where the residents "live in American-style homes, shop for American products and drive American cars. They have cable TV and radio stations, and their children attend schools that could be found in any suburban neighborhood."[3]

42. In light of the foregoing, the United States Navy has accurately described Guantanamo Bay as "a Naval reservation *which, for all practical purposes, is American territory*. Under the [lease] agreements, *the United States has for approximately [ninety] years exercised the essential elements of sovereignty over this territory*, without actually owning it. Unless we abandon the area or agree to a modification of the terms of our occupancy, we can continue in the present status as long as we like. [According to the United States [p]ersons on the reservation are amenable only to United States legislative enactments." *See* The History of Guantanamo Bay: An Online Edition (1964), available at http://www.nsgtmo.navy.mil/history.htm.

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[1] Theodore K Mason, "Across the Cactus Curtain" at 106 (1984) (Library of Congress Cataloging in Publication Data).

[2] *See* Tom Gibbs, "World Americas, America's Slice of Cuba" (BBC Online Network, Friday January 1, 1999).

[3] http://www.sun-sentinel.com/news/local/cuba/sns-gitmo-galleryindex.photogallery?coll=sfla-news-cuba-(Inside Guantanamo Bay Naval Station).

The Petitioner's Detention at Guantanamo

43. On May 4, 2002, the United States military transferred the detained petitioner to Camp Delta, Guantanamo Bay, where he has been held ever since, in the custody of respondents Bush, Rumsfeld, Baccus, and Cline.

44. Since gaining control of the detained petitioner, the United States military has held him virtually *incommunicado*. He has been or will be interrogated repeatedly by agents of the United States Departments of Defense and Justice, though he has not been charged with an offense, nor has he been notified of any pending or contemplated charges. He has made no appearance before either a military or civilian tribunal of any sort, nor has he been provided counsel or the means to contact counsel. He has not been informed of his rights under the United States Constitution, the regulations of the United States Military, the Geneva Conventions, the International Covenant on Civil and Political Rights, the American Declaration on the Rights and Duties of Man, or Customary International Law. Indeed, the respondents have taken the position that he should not be told of these rights. As a result, the detained petitioner is completely unable either to protect, or to vindicate his rights under domestic and international law.

45. Mr. Habib has only been permitted to write a total of three letters to his wife and family since his detention, two of which were delivered to them by the Australian Red Cross one month after they were written, the third was delivered to them by the Australian government. In these letters, detained petitioner expressly requested that his wife seek legal assistance on his behalf. *See* Exhibit A, attachments "MH8" and "MH9".

46. In published statements, respondent Bush and Rumsfeld, and individuals who held the position of respondents Baccus and Cline, Commanding General Lehnert and Camp Commander, Carrico, have indicated that the United States may hold the detained petitioner under these conditions indefinitely. *See, e.g.*, Roland Watson, *The Times (London)*, Jan. 18, 2002 ("Donald Rumsfeld, the U.S. Defence Secretary, suggested last night that al-Qaeda prisoners could be held indefinitely at the base. He said that the detention of some would be open-ended as the United States tried to build a case against them."); Lynne Sladky, Associated Press, Jan. 22, 2002 ("Marine Brig. Gen. Mike Lehnert, who is in charge of the detention mission, defended the temporary cells where detainees are being held . . . 'We have to look at Camp X-ray as a work in progress . . . ,' Lehnert told CNN. . . . Lehnert said plans are to build a more permanent prison 'exactly in accordance with federal prison standards' "); John Mintz, THE WASHINGTON POST, "Extended Detention In Cuba Mulled," Feb. 13, 2002 ("As the Bush administration nears completion of new rules for conducting military trials of foreign detainees, U.S. officials say they envision the naval base at Gantanamo Bay, Cuba, as a site for the tribunals and as a terrorist penal colony for many years to come.").[4] Yet at the same time, respondents and those

[4] *See also* Time Magazine, "Welcome to Camp X-Ray" (February 3, 2002):

> "More curious still is the matter of the prisoners' ultimate fate. Rumsfeld has laid out four options: a military trial, a trial in U.S. criminal courts, return to their home countries for prosecution, or continued detention 'while additional intelligence is gathered.' The last seems a distinct possibility; the Pentagon plans to build 2,000 cells at Camp X-Ray."

in their chain of command have acknowledged that at least "some [of the detainees] were 'victims of circumstance' and probably innocent." Katharine Q. Seelye, *A Nation Challenged*: *Capitves*, N.Y. Times, March 16, 2002; *see also* United States Department of Defense News Transcript, Rumsfeld Interview with KTSP-ABC, St. Paul, Minnesota, February 27, 2002 at 2 (acknowledging the prospect that some detainees are innocent and arrested improperly.)

47. Mr. Habib is among the detainees who is entirely innocent of any wrongdoing.

V
CAUSES OF ACTION

FIRST CLAIM FOR RELIEF
(DUE PROCESS – FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION)

48. Petitioners incorporate paragraphs 1-47 by reference.

49. By the actions described above, respondents, acting under color of law, have violated and continue to violate the Fifth Amendment to the United States Constitution. Respondent Bush, acting pursuant to the Military Order or his authority as Commander in Chief or under the laws and usages of war, has ordered the prolonged, indefinite, and arbitrary detention of individuals, without Due Process of Law. Respondents Rumsfeld, Baccus, and Cline are likewise acting in violation of the Fifth Amendment, since they act at the President's direction. On its face, the Military Order violates the Fifth and Fourteenth Amendments.

SECOND CLAIM FOR RELIEF
(DUE PROCESS – FIFTH AMENDMENT
TO THE UNITED STATES CONSTITUTION)

50. Petitioners incorporate paragraphs 1-49 by reference.

51. By the actions described above, respondents, acting under color of law, have violated and continue to violate the right of the detained petitioner to be free from arbitrary, prolonged, and indefinite detention, in violation of the Due Process Clause of the Fifth Amendment to the United States Constitution. To the extent Mr. Habib is held pursuant to the Military Order, that Order, as applied, violates the Due Process Clause of the Fifth Amendment. To the extent Mr. Habib is held pursuant to the President's authority as Commander in Chief or under the laws and usages of war, his detention violates the Due Process Clause of the Fifth Amendment.

THIRD CLAIM FOR RELIEF
(DUE PROCESS – INTERNATIONAL LAW)

52. Petitioners incorporate paragraphs 1-51 by reference.

53. By the actions described above, respondents, acting under color of law, have violated and continue to violate Customary International Law, Arts. 9 & 14 of the International Covenant on Civil and Political Rights, and Arts. 18, 25, & 26 of the American Declaration on the Rights and Duties of Man. Respondent Bush, acting pursuant to either the Military Order, his authority as Commander in Chief or under the laws and usages of war, has ordered the prolonged, indefinite, and arbitrary detention of Mr. Habib, without legal process, in violation of binding obligations of the United States under International Law. Respondents Rumsfeld, Baccus, and Cline are likewise acting in violation of International Law, since they act at the

President's direction. On its face, the Military Order violates International Law.

FOURTH CLAIM FOR RELIEF
(DUE PROCESS – INTERNATIONAL LAW)

54. Petitioners incorporate paragraphs 1-53 by reference.

55. By the actions described above, respondents, acting under color of law, have violated and continue to violate the right of the detained petitioner to be free from arbitrary, prolonged, and indefinite detention, in violation of Customary International Law, Arts. 9 & 14 of the International Covenant on Civil and Political Rights, and Arts. 18, 25, & 26 of the American Declaration on the Rights and Duties of Man. To the extent Mr. Habib is held pursuant to the Military Order, that order, as applied, violates these binding obligations of the United States under International Law. To the extent Mr. Habib is held pursuant to the President's authority as Commander in Chief or under the laws and usages of war, his detention violates these same obligations.

FIFTH CLAIM FOR RELIEF
(DUE PROCESS – FAILURE TO COMPLY
WITH U.S. MILITARY REGULATIONS AND
INTERNATIONAL HUMANITARIAN LAW)

56. Petitioners incorporate paragraphs 1-55 by reference.

57. By the actions described above, respondents, acting under color of law, have violated and continue to violate the rights accorded to persons seized by the United States Military in times of armed conflict, as established by, *inter alia,* the regulations of the United States Military, Articles 4 and 5 of Geneva

Convention III, Geneva Convention IV, and Customary International Law.

SIXTH CLAIM FOR RELIEF
(WAR POWERS CLAUSE)

58. Petitioners incorporate paragraphs 1-57 by reference.

59. By the actions described above, respondents, acting under color of law, have exceeded the constitutional authority of the Executive and have violated and continue to violate the War Powers Clause by ordering the prolonged and indefinite detention of the detained petitioner without Congressional authorization.

SEVENTH CLAIM FOR RELIEF
(SUSPENSION OF THE WRIT)

60. Petitioners incorporate paragraphs 1-59 by reference.

61. To the extent the order of November 13, 2001, disallows any challenge to the legality of the detained petitioner's detention by way of habeas corpus, the Order and its enforcement constitute an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution.

V
PRAYER FOR RELIEF

WHEREFORE, petitioners pray for relief as follows:

1. Grant petitioner Maha Habib Next Friend status, as Next Friend of Mamdouh Habib;

2. Order the detained petitioner released from respondents' unlawful custody, unless respondents commence a legally sufficient process adequate to establish the legality of petitioner's continued detention;

3. Order respondents to allow counsel to meet and confer with the detained petitioner, in private and unmonitored attorney-client conversations;

4. Order respondents to cease all interrogations of the detained petitioner, direct or indirect, while this litigation is pending;

5. Order and declare the Military Order of November 13, 2001, unlawful as a violation of the Fifth Amendment to the United States Constitution;

6. Order and declare that the detained petitioner is being held in violation of the Fifth and [sic] Amendment to the United States Constitution;

7. Order and declare the Military Order of November 13, 2001, unlawful as a violation of Customary International Law, the International Covenant on Civil and Political Rights, and the American Declaration on the Rights and Duties of Man;

8. Order and declare that the detained petitioner is being held in violation of Customary International Law, the International Covenant on Civil and Political Rights, and the American Declaration on the Rights and Duties of Man;

9. Order and declare that the detained petitioner is being held in violation of the regulations of the United States Military, the Geneva Conventions, and International Humanitarian Law;

10. Order and declare that the Military Order of November 13, 2001, violates the War Powers Clause;

11. Order and declare that the provision of the Military Order that bars the detained petitioner from seeking relief in this Court is an unlawful Suspension of the Writ, in violation of Article I of the United States Constitution;

14 [sic]. To the extent respondents contest any material factual allegations in this Petition, schedule an evidentiary hearing, at which petitioners may adduce proof in support of his allegations;

15 [sic]. Such other relief as the Court may deem necessary and appropriate to protect petitioners' rights under the United States Constitution and International Law.

Dated: Respectfully submitted,

Counsel for Petitioners:

/s/ L. Barrett Boss (for)
Joseph Margulies
Minnesota Bar No. 208528
MARGULIES & RICHMAN, plc
2520 Park Avenue, South
Minneapolis, MN 55404
612-872-4900
612-872-4967 (fax)

/s/ L. Barrett Boss (for)
Clive A. Stafford Smith
Louisiana Bar No. 14444
P.O. Box 50753
New Orleans, LA 70150-0753
(504) 558-0440

/s/ L. Barrett Boss (for)
Michael Ratner
William Goodman
Anthony DiCaprio
Center for Constitutional Rights
New York, N.Y. 10012
(212) 614-6464
(212) 614-6499 (fax)

/s/ L. Barrett Boss (for)
Stephen John Hopper
Sandroussi & Associates
Solicitors & Barristers
71 Burwood Road
Burwood, NSW 2134
Australia
(61) 02 9744 2344
(61) 02 9744 2377 (fax)

/s/ L. Barrett Boss
L. Barrett Boss*
Bar No. 398100
ASBILL MOFFITT & BOSS, Chtd.
1615 New Hampshire Avenue, N.W.
Suite 200
Washington D.C. 20009
(202) 234 9000 (x119)
(202) 332 6480 (fax)

/s/ L. Barrett Boss (for)
Jon W. Norris*
D.C. Bar No. 426105
The Law Office of Jon W. Norris
641 Indiana Avenue, N.W.

VERIFICATION

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 10th day of June, 2002.

/s/ L. Barrett Boss
L. Barrett Boss

* Mr. Norris and Mr. Boss appear as local counsel for all attorneys.

CONSTITUTION OF THE UNITED STATES
Article I

Section 9, Clause 2. Suspension of Habeas Corpus

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 306

LOUIS A. JOHNSON, SECRETARY OF DEFENSE OF THE UNITED STATES, ET AL., PETITIONERS

vs.

LOTHAR EISENTRAGER, ALIAS LUDWIG EHRHARDT, ON HIS OWN BEHALF AND AS NEXT FRIEND OF FRANZ SIEBERT, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Excerpts from Joint Appendix to Briefs

* * *

Petition for Writ of Habeas Corpus

Filed April 26, 1948

Comes now your petitioner and to this Honorable Court respectfully represents:

I. That Petitioner, Ludwig Ehrhardt, brings this matter in his own behalf and as next friend of Frans Siebert, Erich Heise, Oswald Ulbricht, Hans Nieman, Ingward Rudloff, Bodo Habenicht, Hans Dethleffs, Heinz Peerschke, Hans Mosberg, Johannes Rathje, Siegfried Fuellkrug, Walther Heissig, Jesco von Puttkamer, Alfred Romain, Walter Richter, Hermann Jaeger, Felix Altenburg,

Herbert Mueller, August Stock, and Maria Muller. The petitioner, together with the afore-mentioned other persons, hereinafter referred to as the prisoners, are confined in the custody of the Commandant of Landsberg prison, which is located in the American occupation zone of Germany.

II. That the respondent, James A. Forrestal, is the Secretary of Defense of the United States; the respondent, Kenneth C. Royall, is the Secretary of the Army of the United States; and the respondent, General Omar Bradley, is the Chief of Staff of the United States Army; and as such the said respondents have jurisdiction and supervision over the official acts of the said Commandant of Landsberg Prison. The said Commandant of Landsberg Prison is not made a respondent hereto because he is not situated within and cannot be served with process within the territorial limits of the United States. He derives his powers and authority from and is subject to the direction of the respondents, all of whom are located within the District of Columbia.

III. That the prisoners were, prior to May 8, 1945, German nationals in the service of the German armed forces in Shanghai, Canton, and Peiping, in China.

IV. That on May 8, 1945, a so-called "Act of Military Surrender" was executed by "Friedeburg", "Keitel", and "Stumpff", purporting to act on behalf of the German High Command, setting forth an "unconditional surrender" to the Supreme Commander, Allied Expeditionary Force and to the Supreme High Command of the Red Army of "all forces on land, at sea, and in the air" who were at that date "under German control". Paragraph four of the said Act provided: "This act of military surrender is without

prejudice to, and will be superseded by any general instrument of surrender imposed by, or on behalf of the United Nations and applicable to Germany and the German armed forces as a whole." (The "Act of Military Surrender" is marked "Exhibit A", attached hereto and made a part hereof.)

On June 5, 1945 there was executed by Dwight D. Eisenhower, G. Zhukov, B. L. Montgomery, and S. de Lattre-Tassigny, at Berlin, the so-called "Berlin Declaration", which recited that the German armed forces had been defeated and had surrendered unconditionally, and had become subject to such requirements as were therein imposed, that there was "no central Government or authority in Germany capable of accepting responsibility for the maintenance of order, the administration of the country and compliance with the requirements of the Victorious Powers," and which then set forth the terms of the Allied Military Occupation of Germany. (The "Berlin Declaration" is marked "Exhibit B", attached hereto and made a part hereof.) Neither the German High Command nor any other German agency was signatory to nor participant in the "Berlin Declaration", and it was entirely a unilateral pronouncement.

After May 8, 1945, and after June 5, 1945, and until and including August 15, 1945, the Japanese Empire continued to wage war against the United States.

V. That the cities of Shanghai, Canton, and Peiping were, prior to May 8, 1945, and thereafter until August 15, 1945, under the control and domination of the military forces of the Japanese Empire; that during the period of such control and domination, and until August 15, 1945, the prisoners were resident in the said cities and were

subject to the said control and domination of the military forces of the Japanese Empire.

VI. That subsequent to August 15, 1945, twenty-seven persons, including the prisoners and, in addition, Ernest Woerman, Wilhelm Stoller, Elgar von Randow, Herbert Gleitsch, Johannes Otto, and Wolf Schenke (which latter six persons were later acquitted) were taken into custody and held by the Armed Forces of the United States. Twenty-three of the aforesaid persons were served on August 1, 1946, with a charge and bill of particulars, and the remaining four of the said persons were served, on August 28, 1946, with a similar charge and bill of particulars, all under the authority of the Commanding General, Nanking Headquarters Command, a division of United States Forces, China Theater. The charge and bill of particulars (a copy of which marked "Exhibit C" is hereto attached and made a part hereof) alleged violation of the laws of war, to wit: that the accused violated the unconditional German surrender by engaging in, permitting, or ordering military activity against the United States between the German surrender of May 8, 1945, and the cessation of Japanese hostilities on August 15, 1945.

VII. That by paragraph 1, Special Orders No. 120, Headquarters Nanking Headquarters Command dated July 31, 1946 (marked "Exhibit D" hereto attached and made a part hereof), a Military Commission was purported to be constituted for the trial of persons, units, and organizations accused as war criminals within the jurisdiction of the said Nanking Headquarters Command, and upon the completion of such trial or trials to transmit the record thereof, including any judgment or sentence, for action by the appointing authority, viz: the Commanding General of the Nanking Headquarters Command. By letters of

transmittal dated July 31, 1946, and August 1, 15, and 28, 1946, and by first indorsement on each hereof, the aforesaid charges against the 27 accused were referred to be tried in a common trial before the Military Commission (the said documents being marked "Exhibit E", attached hereto and made a part hereof). The aforesaid orders purported to be based on the authority of Letter, Headquarters, United States Forces, China Theater, 21 January 1946, AG000.5 (21 Jan 46) JA, Subject: Regulations Governing the Trial of War Criminals (marked "Exhibit F", attached hereto and made a part hereof).

VIII. That the common trial of the 27 accused began with the arraignment of 23 defendants before the aforesaid Military Commission sitting in courtroom, the Ward Road Jail, Shanghai, China, on August 26, 1946, and the arraignment of the 4 additional accused before the same Military Commission sitting in the same place on September 26, 1946. All of the accused pleaded "not guilty".

IX. That on September 16 and 17, 1946, the Military Commission convened and motions were made on behalf of all of the accused to dismiss the charges on the following grounds (inter alia):

1. That at the time of the German surrender, the accused were not under the control of the German High Command or the German Government, but were under the control of the armed forces of the Japanese Empire,

2. That the unconditional surrender of Germany did not bind the Japanese Empire so as to affect its right to compel cooperation of inhabitants of territory occupied by it,

3. That the acts charged did not constitute war crimes, there being no allegation that the accused had official knowledge or instructions concerning the German surrender,

4. That in the absence of hostilities, martial law, or American Military occupation of China, and in view of treaties between the United States and China dated February 4, 1943, and May 4, 1943, and between Germany and China dated May 18, 1921. The Military Commission was without jurisdiction; all of which motions were denied.

X. That the hearing of the prosecution's case commenced on October 3, 1946, and ended on November 1, 1946, after which all accused moved for findings of not guilty. The motions were allowed with respect to the following six persons:

Ernst Woermann, German Ambassador to Japanese-occupied China.

Wilhelm Stoller, Chief of the Shanghai Office of the German Embassy,

Elgar von Randow, Counselor of the Shanghai Office of the German Embassy,

Herbert Gleitsch, Secretary of the German Consulate at Canton,

Johannes Otto, head of the Nazi Party in South China and leader of the German Community in South China,

Wolf Schenke, member, agent and employee of the Bureau Ehrhardt.

The motions were denied with respect to the remaining twenty-one accused, who are the prisoners for whom this petition is brought.

XI. That the hearing of the defense case commenced on November 13, 1946, and ended on January 14, 1947. On January 17, 1947, the Military Commission rendered its verdict, finding all remaining accused guilty, and sentencing them to confinement at hard labor, as follows:

Ludwig Ehrhardt	Life.
Ingward Rudloff	10 years.
Bodo Habenicht	10 years.
Hans Dethleffs	10 years.
Heinz Peerschke	5 years.
Hans Mosberg	20 years.
Johannes Rathje	15 years.
Walter Richter	10 years.
Hermann Jaeger	10 years.
Jesco von Puttkamer	30 years.
Alfred Romain	30 years.
Franz Siebert	5 years.
Erich Heise	20 years.
Oswald Ulbricht	5 years.
Hans Niemann	5 years.
Felix Altenburg	8 years.
Herbert Mueller	10 years.
Siegfried Fuellkrug	20 years.
Walther Heissig	20 years.
August Stock	5 years.
Maria Muller	5 years.

(The Commission's verdict marked "Exhibit G" is attached here to and made a part hereof.)

XII. That at no time during any of the aforesaid proceedings was the protecting power of Germany notified thereof by the United States, although such notice is required by Article 60 of the Geneva Convention of July

27, 1929, relative to the treatment of prisoners of war, and of Paragraph 133 of the Rules of Land Warfare (FM 27-10), United States War Department, copy of which is marked "Exhibit H" attached hereto and made a part hereof.

XIII. That on May 20, 1947, Major General John P. Lucas, Chief of the United States Army Advisory Group, China, which was the successor, pursuant to War Department radio WCL 34266, dated December 5, 1946, of the Nanking Headquarters Command, acting as Reviewing Authority of the Military Commission, issued his action. The action approved all of the sentences of the Military Commission, but made the following remissions:

Alfred Romain – remitted from 30 to 20 years.
August Stock – remitted from 5 years to 2 years.
Maria Muller – remitted from 5 years to 2 years.

With such modifications, the sentences were ordered executed, Landsberg Prison, Landsberg, Germany, being designated as the place of confinement. (The action of the Reviewing Authority is marked "Exhibit I", attached hereto and made a part hereof.)

XIV. That pursuant to such action, the prisoners were confined and are now confined in Landsberg Prison, Germany, in the custody of the United States Army.

XV. That the detention of the prisoners as convicted war criminals is illegal and in violation of Articles I and III of the Constitution of the United States and of the Fifth Amendment thereto, and of other provisions of said Constitution and laws of the United States and of certain provisions of the Geneva Convention of July 27, 1929, relative to the treatment of prisoners of war, in that:

(a) There being no charge of an offense against the laws of war by the prisoners, the Military Commission was without jurisdiction.

(b) In the absence of hostilities, marital law, or American military occupation of China, and in view of treaties between the United States and China dated February 4, 1943, and May 4, 1943, and between Germany and China, dated May 18, 1921, the Military Commission was without jurisdiction.

(c) The directive of Headquarters, United States Forces, China Theater, (Exhibit F), setting forth the rules of procedure and evidence for the Military Commission, and the action of the Commission thereunder, denied the prisoners the right guaranteed by Article 63 of the Geneva Convention of July 27, 1929, relative to the treatment of prisoners of war, to a trial, "by the same courts and according to the same procedure as in the case of persons belonging to the armed forces of the detaining power," and the Military Commission was, therefore, without jurisdiction.

(d) The United States not having given notice of the trial to the protecting power of Germany as made mandatory by the Geneva Convention of July 27, 1929, relative to the treatment of prisoners of war, the Military Commission had no jurisdiction.

XVI. That the prisoners are and continue to be unlawfully confined as convicted war criminals as aforesaid, by the respondents, their agents and subordinates.

Wherefore, Petitioner prays that a Writ of Habeas Corpus be issued by this Court, directed to the respondents, commanding them to produce his body and the

bodies of the other prisoners before your court or some member thereof at a time and place therein to be specified, then and there to receive and do what your Honorable Court shall order concerning their confinement as convicted war criminals, and that the petitioner and the other prisoners be discharged from the offenses and confinement aforesaid.

LOTHAR EISENTRAGER, alias LUDWIG EHRHARDT.

* * *

In United States District Court

Order to Show Cause

Filed May 17, 1948

Upon the complaint filed herein in the office of the clerk of this Court and the annexed affidavit of Lothar Eisentrager, alias Ludwig Ehrhardt, verified on the 12th day of April 1948, Let the defendants, and each of them, show cause before this Court, at a stated term thereof, to be held for the hearing of motions, in the U. S. District Court, in the City of Washington, D.C., on the 10th day of June 1948, at 10:00 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard, why an order should not be made and entered in the above-entitled action which shall direct that a Writ of Habeas Corpus be issued as requested by the plaintiffs.

Let service of this rule nisi, together with a copy of the complaint and the affidavit hereto annexed, on such of the defendants as may be found within this district on or before the 1st day of June 1948, be deemed sufficient.

(S) T. ALAN GOLDSBOROUGH, *Justice*.

* * *

In United States District Court

Amendment of Petition for Writ of Habeas Corpus

Filed June 10, 1948

Comes now the petitioner, through his attorneys, and respectfully shows to this Honorable Court that the petition herein is amended as follows:

1. Paragraph III of the original petition is deleted and the following paragraph is substituted therefor:

III. That the prisoners were, prior to May 8, 1945, German nationals employed by various civilian agencies of the German Government in Shanghai, Canton, and Peiping, in China as follows:

German Embassy and Consular Service.

Franz Siebert – Consul General at Canton.

Felix Altenburg – Chief, Peiping office, German Embassy.

German Information Bureau (an agency of the German Embassy).

Jesco von Puttkamer.

Alfred Romain.

Bureau Ehrhardt (an agency of the German Embassy).

Lothar Eisentrager, alias Ludwig Ehrhardt.

Erich Heise.

Oswald Ulbricht.

Hans Nieman.

Ingward Rudloff.

Bodo Habenicht.

Hans Dethleffs.

Heinz Peerschke.

Hans Mosberg.

Johannes Rathje.

Siegfried Fuellkrug.

Walther Heissig.

Walter Richter.

Hermann Jaeger.

August Stock.

Maria Muller.

Deutsches Nachrichtenburo (also known as DNB, the German News Agency).

Herbert Mueller.

2. Paragraph XV of the petition is amended by adding thereto a new subparagraph (e), following subparagraph (d), reading as follows:

(e) The prisoners at no time having been members of the armed forces of a nation at war with the United States but having been at all times civilian employees of civilian governmental agencies, they were not belligerents and the Military Commission was accordingly without jurisdiction to try them.

* * *

In United States District Court

Opinion

Filed Oct. 6, 1948

TUESDAY, *September 28, 1948.*

Counsel having been heard on the question of jurisdiction, the opinion of the Court was stated as follows:

The Court (Tamm, J.). This case is before the Court on the petition of a number of war prisoners, who admittedly are not now and have never been in the United States. It is a petition naming the heads of the Department of National Defense as defendants and asks that the plaintiff be permitted the process of habeas corpus. The habeas corpus process is authorized to the District Court through the provisions of sections 451 and 452 of the Judicial Code, which provide:

"Power of Courts: The Supreme Court and the District Courts shall have power to issue writs of habeas corpus.

"Power of Judges: The several justices of the Supreme Court and the several judges of the circuit courts of appeal and the district courts within their respective jurisdictions shall have power to grant writs of habeas corpus for the purpose of an inquiry into the causes of restraints of liberty."

The facts at issue were directly raised before the Supreme Court in its last term, in the case of Paul Ahrens et al. v. Tom C. Clark, Attorney General of the United States, 16 Law Week 4640, in which the Supreme Court specifically passed upon the power of the district courts to issue writs of habeas corpus in cases in which the petitioners are not physically within the jurisdiction of the court.

In that case Justice Douglas, in delivering the majority opinion of the Supreme Court, stated:

"The question at the threshold of the case is whether the words 'within their respective jurisdictions' limited the district courts to inquiries into the causes of restraints of liberties of those confined or restrained within the territorial jurisdictions of the courts."

"That is our view," says Justice Douglas in expressing the majority opinion of the Supreme Court.

It appearing, consequently, that the Supreme Court has specifically passed upon the question of law presented to this Court, the Court bows to that decision and the petition is dismissed.

* * *

Exhibit "C" – Charge

That between 8 May and 15 August 1945, Lothar Eisentraeger alias Ludwig Ehrhardt, Franz Siebert, Herbert Glietsch, Johannes Otto, Erich Heise, Oswald Ulbricht, Hans Niemann, Ingward Rudloff, Bodo Habenicht, Hans Dethleffs, Wolf Schenke, Heinz Peerschke, Hans Mosberg, Johannes Rathje, Siegfried Fuellkrug, Walther Heissig, Jesco von Puttkamer, Alfred Romain, Ernst Woermann, Wilhelm Stoller, Elgar von Randow, Walter Richter, Hermann Jaeger, Felix Altenburg, Herbert Mueller, August Stock, Maria Muller, individually and as officials, nationals, citizens, agents or employees of Germany, while residing in China at a time when the United States of America was at war with Japan, did in China in a Theatre of military operations, knowingly, wilfully and unlawfully violate the unconditional German

surrender by engaging in and continuing military activity against the United States and its allies, to wit, by furnishing, ordering, authorizing, permitting and failing to stop the furnishing of aid, assistance, information, advice, intelligence, propaganda and materials to the Japanese armed forces and agencies thereof, by such acts of treachery assisting Japan in waging war against United States of America, in violation of the laws and customs of war.

Bill of Particulars

1. That between 8 May and 15 August 1945, Lothar Eisentrager, alias Ludwig Ehrhardt, a member of the German Embassy to enemy-occupied China, as head of a German intelligence agency known as the Bureau Ehrhardt, a unit of the German High Command, did individually at Shanghai and by his agents at Shanghai, Canton and Peiping, wilfully and unlawfully engage in military activity, against the United States and its allies, to wit, the collection of military intelligence concerning, inter alia, land, sea and air movements by the United States and its allies and transmission of it to the Japanese armed forces; that on or about 8 May 1945, as head of the Bureau Ehrhardt, he did wilfully and unlawfully transmit through the Shanghai Office of the German Embassy in China, a telegram ordering, authorizing and permitting his agents in Canton and Peiping to furnish aid and intelligence to the Japanese armed forces; that he did wilfully and unlawfully order, authorize and permit his agents in Shanghai to furnish aid and intelligence to the Japanese armed forces.

2. That between 8 May and 15 August 1945, Franz Siebert, in his position as German Consul General,

former German Consul General and a leader of the German community at Canton, did at Canton wilfully and unlawfully order, authorize, permit and fail to stop the continuation of German military activity against the United States and its allies, to wit, the collection of military intelligence concerning the United States and its allies and transmission of it to the Japanese armed forces, by persons under his control, namely Erich Heise, Oswald Ulbricht, Hans Niemann and others; and that he did wilfully and unlawfully order and instruct representatives of German business firms, on or about 15 May 1945 to submit to him lists of essential war materials in their possession which lists on or about 1 and 7 June 1945 were submitted by him to the Japanese armed forces enabling them to secure control and make use of said materials; and that he did on or about 15 May 1945 wilfully and unlawfully order all German citizens and nationals in the Canton area, at a called meeting, to obey his commands to continue active assistance to the Japanese authorities under penalty of punishment by the Japanese.

3. That between 8 May and 15 August 1945, Herbert Glietsch, in his position as Secretary and former Secretary of the German Consulate at Canton, as a leader of the German community there, and agent of the German High Command, did at Canton wilfully and unlawfully order, authorize, permit and fail to stop the continuation of German military activity against the United States and its allies to wit, the collection of intelligence concerning inter alia, land, sea and air movements by the United States and its allies and transmission of it to the Japanese armed forces; by persons under his control, namely Erich Heise, Oswald Ulbricht and Hans Niemann; that he decoded, approved and delivered on or about 15 May 1945 to Erich

Heise, Canton chief of the Bureau Ehrhardt, a German High Command intelligence agency, a telegram dated on or about 8 May 1945 which unlawfully ordered and authorized the continuation of military activity.

4. That between 8 May and 15 August 1945, Johannes Otto, in his position as head of the Nazi Party in South China and a leader of the German community there, did at Canton wilfully and unlawfully authorize, permit and fail to stop the continuation of German military activity against the United States and its allies, to wit, the collection of military intelligence concerning, inter alia, land, sea and air movements by the United States and its allies, and transmission of it to the Japanese armed forces by persons of the community under his control, namely Erich Heise, Oswald Ulbricht, Hans Niemann and others.

5. That between 8 May and 15 August 1945, Erich Heise, member and agent of the Bureau Ehrhardt, an intelligence unit of the German High Command and head of its Canton office, known as the Office Heise, did at Canton wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection of military intelligence concerning, inter alia, land, sea and air movements by the United States and its allies, and transmission of it and information and advice to the Japanese armed forces; and that he did wilfully and unlawfully order and permit persons under his control, namely Oswald Ulbricht, Hans Niemann and others to engage in the same unlawful activity.

6. That between 8 May and 15 August 1945, Oswald Ulbricht, member and agent of the Bureau Ehrhardt, an intelligence agency of the German High Command, and employed in its office at Canton, known as of the Office

Heise, did thereat wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land, sea, and air movements by the United States and its allies and the rendering of other aid, assistance and advice to the Office Heise knowing it was for the use and benefit of and furnished to the Japanese armed forces.

7. That between 8 May and 15 August 1945, Hans Niemann, member and agent of the Bureau Ehrhardt, an intelligence agency of the German High Command and employed in its office at Canton, known as the Office Heise, did thereat wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land, sea, and air movements, by the United States and its allies and the rendering of other aid, assistance and advice to the Office Heise knowing it was for the use and benefit of and furnished to the Japanese armed forces.

8. That between 8 May and 15 August 1945, Ingward Rudloff, a member, agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High Command, did at Shanghai wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land, sea, and air movements by the United States and its allies and the rendering of other aid, assistance and advice to the Bureau Ehrhardt, knowing it was for the use and benefit of and furnished to the Japanese armed forces.

9. That between 8 May and 15 August 1945, Bodo Habenicht, a member, agent and employee of the Bureau Ebrhardt, an intelligence agency of the German High Command, did at Shanghai wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land, sea and air movements, by the United States, and its allies and the rendering of other aid, assistance and advice to the Bureau Ehrhardt knowing it was for the use and benefit of and furnished to the Japanese armed forces.

10. That between 8 May and 15 August, Hans Dethleffs, a member, agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High Command, did at Shanghai wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land, sea, and air movements by the United States and its allies and the rendering of other aid, assistance, and advice to the Bureau Ehrhardt knowing it was for the use and benefit of and furnished to the Japanese armed forces.

11. That between 8 May and 15 August 1945, Wolf Schenke, a member, agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High Command, did at Shanghai, wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land, sea, and air movements by the United States and its allies and the rendering of other aid, assistance and advice to the Bureau Ehrhardt knowing it was for the use and benefit of and furnished to the Japanese armed forces.

12. That between 8 May and 15 August 1945, Heinz Peerscheke, a member, agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High Command, did at Shanghai wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land, sea, and air movements by the United States and its allies and the rendering of other aid, assistance and advice to the Bureau Ehrhardt knowing it was for the use and benefit of and furnished to the Japanese armed forces.

13. That between 8 May and 15 August 1945, Hans Mosberg, a member, agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High Command, did at Shanghai wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land, sea, and air movements by the United States and its allies and the rendering of other aid, assistance and advice to the Bureau Ehrhardt knowing it was for the use and benefit of and furnished to the Japanese armed forces.

14. That between 8 May and 15 August 1945, Johannes Ruthje, a member, agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High Command, did at Shanghai wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land, sea, and air movements by the United States and its allies and rendering of other aid, assistance and advice to the Bureau Ehrhardt, knowing it was for the use and benefit of and furnished to the Japanese armed forces.

15. That between 8 May and 15 August 1945, Siegfried Fuellkrug, a member, agent and employee of the Bureau Ehrhardt, an intelligence unit of the German High Command and head of its Peiping office, known as the Office Fuellkrug, did at Peiping wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection of military intelligence concerning, inter alia, land, sea and air movements by the United States and its allies and transmission of it and information and advice on political and military conditions, plans and happenings in North China, Mongolia and the Union of Soviet Socialist Republics to the Bureau Ehrhardt and the Japanese armed forces; and that he did order, permit and authorize persons under his control, to wit, August Stock, Walther Heissing and Maria Muller to engage in such unlawful activity.

16. That between 8 May and 15 August 1945, Walther Heissig, a member, agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High Command and employed in its office at Peiping, known as the Office Fuelkrug, did thereat wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, translation and compilation of military intelligence concerning, inter alia, land, sea and air movements by the United States and its allies and transmission of it and information and advice on political and military conditions, plans and happenings in North China, Mongolia and the Union of Soviet Socialist Republics to the Bureau of Ehrhardt and the Japanese armed forces; and that he did order, permit and authorize persons under his control, to wit, August Stock and Maria Muller, to engage in similar unlawful activity.

17. That between 8 May and 15 August 1945, Jesco von Puttkamer, in his position as head of the German Information Bureau, Shanghai, a military propaganda agency of the German Embassy to enemy-occupied China, did thereat individually and by his agents wilfully and unlawfully engage in military activity against the United States and its allies, to wit, psychological warfare by designing, preparing and furnishing to the Japanese armed forces for their use propaganda material in the English language consisting of, inter alia, leaflets, posters, and photographs designed to influence, adversely to the United States and its allies, the actions of United States troops and civilian populations; and that he did wilfully and unlawfully furnish military advice, information and intelligence to the Japanese armed forces.

18. That between 8 May and 15 August 1945, Alfred Romain, a member and employee of the German Information Bureau, Shanghai, a military propaganda agency of the German Embassy to enemy-occupied China, did at Shanghai wilfully and unlawfully engage in military activity against the United States and its allies, to wit, psychological warfare by designing, preparing and furnishing to the German Information Bureau and to the Japanese armed forces for use by the latter, propaganda material in the English language, consisting of inter alia, leaflets, posters, designs and photographs intended to influence, adversely to the United States and its allies, the actions of United States troops and civilian populations.

19. That between 8 May and 15 August 1945, Ernst Woermann, in his position as German Ambassador to enemy-occupied China, former German Ambassador, head of the German community there and the superior of Lothar Eisentrager, alias Ludwig Ehrhardt, diplomatic

official and head of the Bureau Ehrhardt, a German High Command intelligence agency, and in control of the German Information Bureau, a military propaganda agency, did in China willfully and unlawfully order, authorize, permit and fail to stop German military activity against the United States and its allies, by those under his command and control, to wit, the collection and analysis by the Bureau Ehrhardt of intelligence in Shanghai, Canton and Peiping and preparation by the German Information Bureau of propaganda material in Shanghai against the United States and its allies and transmission of both to the Japanese armed forces for their use.

20. That between 8 May and 15 August 1945, Wilhelm Stoller, in his position as chief of the Shanghai Office of the German Embassy to enemy-occupied China, and the superior of Lothar Eisentrager, alias Ludwig Ehrhardt, diplomatic official and head of the Bureau Ehrhardt, a German High Command intelligence agency, and in control of the German Information Bureau, a military propaganda Agency, as former chief of such Embassy Office and a head of the German community in Shanghai, did at Shanghai wilfully and unlawfully order, authorize, permit and fail to stop the continuation of German military activity against the United States and its allies, by those under his command and control, to wit, the collection by the Bureau Ehrhardt of intelligence in Shanghai, Canton and Peiping and preparation by the German Information Bureau of propaganda material in Shanghai against the United States and its allies and transmission of both to the Japanese armed forces; that unlawful activity of intelligence nature took place in Canton and Peiping pursuant to his direction and approval expressed in a telegram to the German Consulate

at Canton and the Embassy Office at Peiping signed by him, dated on or about 8 May 1945 and duly delivered.

21. That between 8 May and 15 August 1945, Elgar von Randow, in his position as Counselor of the Shanghai Office of the German Embassy to enemy-occupied China and the immediate superior of Lothar Eisentrager, alias Ludwig Ehrhardt, diplomatic official and head of the Bureau Ehrhardt, a German High Command intelligence agency, and in immediate control of the German Information Bureau, a military propaganda agency, as former counselor of such office and a head of the German community in Shanghai, did at Shanghai, wilfully and unlawfully order, authorize, permit and fail to stop the continuation of German military activity against the United States and its allies, by those under his command and control, to wit, the collection by the Bureau Ehrhardt of intelligence in Shanghai, Canton and Peiping and preparation by the German Information Bureau of propaganda material in Shanghai against the United States and its allies and transmission of both to Japanese armed forces; that unlawful activity of intelligence nature took place in Canton and Peiping pursuant to his direction and approved expressed in a telegram to the German Consulate at Canton and the Embassy Office at Peiping, approved and dispatched by him on or about 8 May 1945, and duly delivered.

22. That between 8 May and 15 August 1945, Walter Richter, a member, agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High Command, did at Shanghai wilfully and unlawfully engage in military activity against the United States and is allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land,

sea and air movements by the United States and its allies and the rendering of other aid, assistance and advice to the Bureau Ehrhardt, knowing it was for the use and benefit of and furnished to the Japanese armed forces.

23. That between 8 May and 15 August 1945, Herman Jaeger, a member, agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High Command, did at Shanghai wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, compilation and transmission of military intelligence concerning, inter alia, land, sea and air movements of the United States and its allies and the rendering of other aid, assistance and advice to the Bureau Ehrhardt, knowing it was for the use and benefit of and furnished to the Japanese armed forces.

24. That between 8 May and 15 August 1945, Felix Altenburg, in his position as chief of the Peiping Office of the German Embassy to enemy-occupied China and the Superior of Siegfried Fuellkrug who was a member of the Embassy staff and head of the Peiping unit of the German High Command's intelligence agency in China, namely the Bureau Ehrhardt, as former chief of such Embassy Office and a leader of the Germany community at Peiping, did at Peiping wilfully and unlawfully, order, authorize, permit and fail to stop the continuation by persons under his control, to wit, Siegfried Fuellkrug, Walther Heissig, Herbert Mueller, August Stock, Maria Muller and others, of military activity against the United States and its allies, to wit, the collection of intelligence concerning, inter alia, land, sea and air movements by the United States and its allies, and transmission of it and analysis of and advice on political and military conditions, plans and happenings in North China, Mongolia and the Union of

Soviet Socialist Republics and other nations allied with the United States to the Japanese armed forces.

25. That between 8 May and 15 August 1945, Herbert Mueller, in his position as agent of the Peiping office of a German government news and propaganda agency, Deutsches Nachrichtenburo, also known as DNB, did at Peiping wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, interpretation, edition, analysis and transmission to the Japanese armed forces of economic, political and military intelligence, including that which he daily intercepted from radio broadcasts by the United States and its allies.

26. That between 8 May and 15 August 1945, August Stock, member, agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High Command, and employed in its office at Peiping known as the Office Fuellkrug did thereat wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, translation and analysis of military intelligence concerning, inter alia, land, sea and air movements by the United States and its allies, and transmission of it and information on political and military conditions, plans and happenings in North China, Mongolia and the Union of Soviet Socialist Republics to the Japanese armed forces and to the Bureau Ehrhardt, knowing it was for the use and benefit of and furnished to the Japanese armed forces.

5 Yrs. [Reduced to 2 Yrs.]

27. That between 8 May and 15 August 1945, Maria Muller, member agent and employee of the Bureau Ehrhardt, an intelligence agency of the German High

Command and employed in its office at Peiping known as the Office Fuellkrug, did thereat wilfully and unlawfully engage in military activity against the United States and its allies, to wit, the collection, translation and analysis of military intelligence concerning, inter alia, land, sea and air movements by the United States and its allies and transmission of it and information on political and military conditions and happenings in North China, Mongolia and the Union of Soviet Socialist Republics to the Japanese armed forces and to the Bureau Ehrhardt, knowing it was for the use and benefit of and furnished to the Japanese armed forces.

Exhibit "F"

Restricted

HEADQUARTERS,
UNITED STATES FORCES, CHINA THEATER.

APO 971

AG 000.5 (21 Jan 46) JA *21 January 1946.*

Subject: Regulations Governing the Trial of War Criminals

The following rules and regulations will govern the trials of persons, units and organizations accused as War Criminals in this theater:

ESTABLISHMENT OF MILITARY COMMISSIONS

1. General. Trial of persons, units, and organizations accused as War Criminals will be by military commissions to be convened by the Commanding General, United States Army Forces, China Theater.

2. Number and Types. The number and types of commissions to be established will depend upon the number and nature of the offenses involved and of the offenders to be tried. Such commissions may include members of any one branch or of several branches of the armed services, to try cases involving offenses against any one or more of such service branches, or any other offenses.

JURISDICTION

3. Over Territory. The military commissions established hereunder shall have jurisdiction over all of China, co-existensive with the China Theater of Operations, and territory now or formerly belonging to China, including Formosa, Manchuria, and Hainan Island, and other areas wherein the armed forces commanded by the Commanding General, United States Army Forces, China Theater, are or have been stationed.

4. Over Persons. a. The military commissions established hereunder shall have jurisdiction over all persons, units or organizations within China Theater of Operations including Formosa, Manchuria and Hainan Island and other areas wherein the armed forces, commanded by the Commanding General, United States Army Forces, China Theater are or have been stationed.

b. Any military or Naval unit or any official or unofficial group or organization, whether or not still in existence, may be charged with criminal acts or complicity therein and tried by a military commission.

c. The convening authority may specify particular offenders to be tried before any commission appointed by him.

5. Over Offenses. a. The military commissions established hereunder shall have jurisdiction over the following offenses: Violations of the laws or customs of war, including but not limited to murder, torture or ill-treatment of prisoners of war or persons on the seas; killing or ill-treatment of hostages; murder, torture or ill-treatment, or deportation to slave labor or for any other illegal purposes, of civilians of, or in, occupied territory; plunder of public or private property; wanton destruction of cities, towns or villages; devastation, destruction or damage of public or private property not justified by military necessity; murder, extermination, enslavement, deportation or other inhuman acts committed against any civilian population, or persecution on political, racial, national or religious grounds, in execution of or connection with any offense within the jurisdiction of the commission, whether or not in violation of the domestic law of the country where perpetrated; and all other offenses against the laws or customs of war; participation in a common plan or conspiracy to accomplish any of the foregoing. Leaders, organizers, instigators, accessories and accomplices participating in the formulation or execution of any such common plan or conspiracy will be held responsible for all acts performed by any person in execution of that plan or conspiracy.

b. Persons whose offenses have a particular geographical location outside the China Theater of Operations may be returned to the scene of their crimes for trial by competent military or civil tribunals of local jurisdiction. In the event a person is requested for trial in two (2) or

more countries, the Commanding General, United States Army Forces, China Theater, will determine the place of trial on the basis of the relative gravity of the respective charges and other relevant circumstances.

MEMBERSHIP OF COMMISSION

6. Appointment. The members of each military commission will be appointed by the Commanding General, United States Army Forces, China Theater, or under authority delegated by him. The appointment may be made in the order convening the commission or in a separate order. Alternates may be appointed by the convening authority. Such alternates shall attend all sessions of the commission and in case of illness or other incapacity of any principal member, an alternate shall take the place of that member. Any vacancy among the members or alternates occurring after a trial has begun may be filled by the convening authority, but the substance of all proceedings had and evidence taken in that case shall be made known to that new member or alternate in open court before the trial proceeds.

7. Number of Members. Each commission shall consist of not less than three (3) members.

8. Qualifications. The convening authority shall appoint to the commission, persons whom he determines to be competent to perform the duties involved and not disqualified by personal interest or prejudices; provided, that no person shall be appointed to hear a case which he personally investigated, nor if he is required as a witness in that case. A commission may consist of Army and other

service personnel, or of both service personnel and civilians. If feasible, one or more members of a commission should have had legal training.

9. Quorum and Voting. A quorum shall consist of two-thirds (⅔) of the members of the commission, or alternates (if any) acting as members, but in no event less than three (3) members. All decisions of the commission shall be by majority vote of the members present when the vote is taken, which shall be a quorum, except that conviction and sentence shall be by the affirmative votes of not less than two-thirds (⅔) of the members of the quorum. In case of a tie vote, the vote of the presiding member will determine.

10. Presiding Member. In the event the convening authority does not name one of the members as the presiding member the senior officer among the members of the commission present shall preside, or such other member as the senior officer may designate.

PROSECUTORS

11. Appointment. The convening authority shall designate one or more persons to conduct the prosecution before each commission.

12. Duties. The duties of the prosecutor are:

a. To determine the offenses and the offenders to be tried before the commission in addition to those specifically ordered by the convening authority.

b. To prepare and present to the commission charges and specifications.

c. To prepare cases for trial and to conduct the prosecution of each case before the commission.

POWERS AND PROCEDURE OF COMMISSIONS

13. Conduct of the Trial. A Commission shall:

a. Confine each trial strictly to a fair, expeditious hearing on the issues raised by the charges, excluding irrelevant issues or evidence and preventing any unnecessary delay or interference.

b. Deal summarily with any contumacy or contempt, imposing any appropriate punishment therefor.

c. Sessions of a commission shall be public except when otherwise directed by the commission.

d. A commission shall hold each session at such time and place as it shall determine or as may be directed by the convening authority.

14. Rights of the Accused. The accused shall be entitled:

a. To have in advance of trial a copy of the charges and specifications, so worded as clearly to apprise the accused of each offense charged.

b. To be represented prior to and during trial by counsel of his own choice, or to conduct his own defense. If the accused fails to designate his counsel, the commission shall appoint competent counsel to represent or advise the accused.

c. To have his own counsel present relevant evidence at the trial in support of his defense, and cross-examine

each adverse witness who personally appears before the commission.

d. To have the charges and specifications, the proceedings and any documentary evidence translated when he is unable otherwise to understand them.

15. Witnesses. The commission shall have power:

a. To summon witnesses and require their attendance and testimony under penalty; to administer oaths or affirmation to witness and other persons, and to question witnesses.

b. To require the production of documents and other evidentiary material.

c. To have evidence taken by a special commissioner appointed by the commission.

16. Evidence. a. The commission shall admit such evidence as in its opinion would be of assistance in proving or disproving the charges, or such as in the commission's opinion would have probative value in the mind of a reasonable man. In particular, and without limiting in any way the scope of the foregoing general rules, the following evidence may be admitted:

(1) Any document which appears to the commission to have been signed or issued officially by any officer, department, agency, or member of the armed forces of any government, without proof of the signature or of the issuance of the document.

(2) Any report which appears to the commission to have been signed or issued by the International Red Cross or a member thereof, or by a medical doctor or any medical

service personnel, or by an investigator or intelligence officer, or by any other person whom the commission finds to have been acting in the course of his duty when making the report.

(3) Affidavits, depositions, or other statements taken by an officer detailed for that purpose by military authority.

(4) Any diary, letter or other document appearing to the commission to contain information relating to the charge.

(5) A copy of any document or other secondary evidence of its contents.

(6) Hearsay evidence.

b. The commission shall take judicial notice of facts of common knowledge, official government documents of any nation, and the proceedings, records and findings of military or other agencies of any of the United Nations.

c. A commission may require the prosecution and the defense to make a preliminary offer of proof, whereupon the commission may rule in advance on the admissibility of such evidence.

d. If the accused is charged with an offense involving concerted criminal action upon the part of a military or naval unit, or any group or organization, evidence which has been given previously at a trial of any other member of that, unit, group or organization, relative to that concerted offense, may be received as prima facie evidence that the accused likewise is guilty of that offense.

e. The findings and judgment of a commission in any trial of a unit, group or organization with respect to the criminal character, purpose or activities thereof shall be given full faith and credit in any subsequent trial by that or any other commission of an individual person charged with criminal responsibility through membership in that unit, group or organization. Upon proof of membership in such unit, group or organization convicted by a commission, the burden of proof shall shift to the accused to establish any mitigating circumstances relating to his membership or participation therein.

f. The official position of the accused shall not absolve him from responsibility, or be considered in mitigation or punishment. Further, action pursuant to order of the accused's superior, or of his government, shall not constitute a defense, but may be considered in mitigation of punishment if the commission determines that justice so requires.

17. Trial Procedure. The proceedings at each trial will be conducted substantially as follows, unless modified by the commission to suit the particular circumstances:

a. Each charge and specification will be read, or its substance stated, in open court.

b. The presiding member shall ask each accused whether he pleads "Guilty" or "Not Guilty".

c. The prosecution shall make its opening statement.

d. The presiding member may, at this or any other time, require the prosecutor to state what evidence he proposes to submit to the commission, and the commission thereupon may rule upon the admissibility of such evidence.

e. The commission may put any question to any witness and to any accused at any time. The prosecution and the defense may then further examine and or cross-examine any such witness or accused.

f. The witnesses and other evidence for the prosecution shall be heard or presented. At the close of the case for the prosecution, the commission may, on motion of the defense for a finding of not guilty, consider and rule whether the evidence before the commission supports the charges against the accused. The commission may defer action on any such motion and permit or require the prosecution to reopen its case and produce any further available evidence.

g. The defense may make an opening statement prior to presenting its case. The presiding member may, at this or any other time, require the defense to state what evidence they propose to submit to the commission, whereupon the commission may rule upon the admissibility of such evidence.

h. The witnesses and other evidence for the defense shall be heard or presented. Thereafter, the prosecution and defense may introduce such evidence in rebuttal as the commission may rule admissible.

i. The defense, and thereafter the prosecution, shall address the commission.

j. The commission shall consider the case in closed session and thereafter in open court deliver its judgment, and in the event of a conviction shall pronounce sentence.

18. Record of Proceedings. Each commission shall make a separate record of its proceedings in the trial of each case brought before it. The record shall be prepared

by the prosecutor under the direction of the commission and submitted to the defense counsel. The commission shall be responsible for its accuracy. Such record, certified by the presiding member of the commission or his successor, shall be delivered to the convening authority as soon as possible after the trial.

Judgment and Sentence

19. Judgment. The judgment of a commission as to guilt or acquittal shall be delivered in open court. It may state the reasons on which based.

20. Sentence. The commission may sentence an accused, upon conviction, to death by hanging or shooting, imprisonment for life or for any less term, fine, or such other punishment as the commission shall determine to be proper. The commission may also order confiscation of any property of a convicted accused, deprive that accused of any stolen property, or order its delivery to the Commanding General, United States Army Forces, China Theater, for disposition as he shall find be proper, or may order restitution with appropriate penalty in cases of default.

21. Approval of Sentence. No sentence, including the death sentence, of a military commission shall be carried into effect until approved by the Commanding General, United States Army Forces, China Theater, or his successor. He shall have authority to approve, mitigate, remit, commute, suspend, reduce or otherwise alter the sentence imposed, or (without prejudice to accused) remand the case for rehearing before a new military commission; but he shall not have authority to increase the severity of the sentence. Except as herein provided, the judgment and sentence and interlocutory rulings of a commission shall

be final and not subject to review. No appeal may be taken from the judgment and/or sentence of a commission to any civil court or higher military authority.

RULE MAKING POWER

22. Supplementary Rules and Forms. Each commission shall adopt rules and forms to govern its procedure, not inconsistent with the provisions hereof or such rules and forms as may be prescribed by the convening authority to-wit, the Commanding General, United States Army Forces, China Theater.

By Command of Lieutenant General Wedemeyer:

(S) PAUL W. CARAWAY,
Brigadier General, GSC,
Acting Chief of Staff.

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Respondents' Exhibit Four

War Department, Classified Message Center,
Outgoing Classified Message

Paraphrase Not Required. Handle as Secret Correspondence per Paras 51 (i) and 60 (a). AR 380-5

Joint Chiefs of Staff,
Col. C.R. Peck, Inf.,
W.D. Extension 77500.
6 July 1946
Classification Cancelled per
SANACC Downgrading Proceedings on SWNCC211 7

(S) FRANK F. MITER,
Col. GSG, 28 May 1948

COMGENUSAFC, Shanghai, China
Number: WAR 93586

To Wedemeyer from the Joint Chiefs of Staff.
Your radio CFB-28889 refers.

Authority granted, provided the Chinese Government acquiesces, to appoint United States Military Commission in China for the trial of violation of the laws and customs of war and German soldiers, civilians, and consular officials, and such other persons as you may determine, who are charged with violation of German surrender terms; to proceed with the trials; and to approve and execute sentences, including the death penalty subject to review prescribed by the Commanding General of the U.S. Army Forces in China. You are further authorized to designate Germany as the place of confinement and execution of sentences of such convicted Germans as you may determine.

Office of Military Government for Germany (U.S.) concurs.

Note: CFB 28889 is CM-IN 4053 (19 April 46).
ORIGINATOR: JC/S
DISTRIBUTION: Admiral Leahy, CG AAF, D/PA, D/I D/SSP, D/PO, CAD, Admiral Nimitz, TAG, Servat, Mr. Petersen, Mr. Royall, C. of S.
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